

**Commission Meeting
Agenda**
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Location of Meeting:

Red Lion Hotel at the Park
303 West North River Drive
Spokane, WA 99201
(509) 326-8000

Date and Time of Meeting:

Thursday, September 14, 2006
1:30 p.m.

Informal Study Group Sessions:

9:30 a.m. – 10:00 a.m.	Charitable Nonprofit Study Session
10:00 a.m. – Noon	Commercial Operators Study Session

Public Meeting:

Please note agenda items after 1:30 p.m. may be taken out of sequence at the discretion of the Chair.

1. Agenda Review / Director's Report:

Administrative Issues:

- a) Adjusted Cash Flow Status Report
 - b) Agency Request Legislation Proposal
 - c) Correspondence:
 - National Indian Gaming Commission-Rules Pertaining to Class II Electronic Devices
 - Gambling Commission 2007-2009 Biennium Budget
 - d) Monthly Update Reports:
 - Administrative Case Update
 - Seizure Update
 - Congressional Update
 - e) News Articles
- Comments from the Public**

Amy Hunter, Administrator

Please turn telephones and pagers off during meeting sessions

2. **New Licenses and Tribal Certifications:** **David Trujillo, Assistant Director**
3. **Defaults:** **Amy Hunter, Administrator**
 - a) Paula Elkins, Class III Employee-Revocation
4. **Petitions:**
 - a) **Petition for Reconsideration:** **Bruce Marvin, Ast. Atty. General**
Sharkey's Sports Bar & Grill, Mount Lake Terrace 3:00 p.m.
 - b) **Petition for Review:** **Bruce Marvin, Ast. Atty. General**
Laurel Forcher, Card Room Employee-Revocation 3:15 p.m.
5. **Summary Suspensions**
6. **Other Business/General Discussion/Comments from the Public**

**Executive Session to Discuss Pending Investigations, Tribal Negotiations & Litigation;
and Adjournment**

Upon advance request, the Commission will pursue reasonable accommodations to enable persons with disabilities to attend Commission meetings. Questions or comments pertaining to the agenda and requests for special accommodations should be directed to Shirley Corbett, Executive Assistant at (360) 486-3447 or TDD (360) 486-3637. Questions or comments pertaining to rule changes should be directed to Susan Arland, Rules Coordinator and Public Information Officer at (360) 486-3466.

Commission Meeting Agenda
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Location of Meeting:

Red Lion Hotel at the Park
303 West North River Drive
Spokane, Washington 99201
(509) 326-8000

Date and Time of Meeting:

Friday, September 15, 2006
9:30 a.m.

7. **Approval of Minutes:** Regular Meeting, August 10 & 11, 2006

Rules Up for Final Action

8. **Petition for Rule Change–ZDI Gaming, Inc., Cash Cards –** (Petition Withdrawn)

Filed 05-17-06 as a Pre-Proposal Statement of Inquiry (CR-101) under WSR #06-11-095.

a) **Amendatory Section WAC 230-12-050**

Extension of credit, loans, or gifts prohibited - Limited exception.

b) **Amendatory Section WAC 230-30-070**

Control of prizes – Restrictions – Bonus prizes – Displaying – Procedures for awarding.

9. **Petition for Rule Change – Don Logerwell**

Amy Hunter, Administrator

Filed 05-04-06 as a Pre-Proposal Statement of Inquiry (CR-101) under WSR #06-11-006. Filed 07/07/06 as a Proposed Rule Making (CR-102) under WSR # 06-15-024 with a published date of 08/22/06.

a) **Amendatory Section WAC 230-02-412**

Gambling equipment defined.

10. **Rules Simplification Project**

Beth Heston, Project Manager

Filed 03/17/06 as a Pre-Proposal Statement of Inquiry (CR-101) under WSR #06-07-108. Filed 06/20/06 as a Proposed Rule Making (CR-102) under WSR # 06-13-077 with a published date of 07/05/06.

a) **Chapter 230-11 – Raffles.**

Chapter 230-11 won't become effective until 01-01-08.

Rules Up for Discussion

11. **Rules Simplification Project** **Beth Heston, Project Manager**
Filed 05/18/06 as a Pre-Proposal Statement of Inquiry (CR-101) under WSR #06-11-110. Filed 08/22/06 as a Proposed Rule Making (CR-102) under WSR # 06-17-134 with a published date of 09/06/06.
 - a) **Chapter 230-18 – Promotional Contests of Chance.**
Chapter 230-18 won't become effective until 01-01-08.
12. **Rules Simplification Project** **Beth Heston, Project Manager**
Filed 03/17/06 as a Pre-Proposal Statement of Inquiry (CR-101) under WSR #06-07-109. Filed 08/22/06 as a Proposed Rule Making (CR-102) under WSR # 06-17-133 with a published date of 09/06/06.
 - a) **Chapter 230-09 Fund Raising Events.**
Chapter 230-09 won't become effective until 01-01-08.
13. **Allowing Poker at Fund-Raising Events** **Jeannette Sugi, Acting Asst. Director**
Filed on 08-24-05 as a Pre-Proposal Statement of Inquiry (CR-101) under WSR #05-17-202. Filed 08/14/06 as a Proposed Rule Making (CR-102) under WSR # 06-17-083 with a published date of 09/06/06.
 - a) **Amendatory Section WAC 230-25-040**
Fund-raising event—House rules to be developed and posted—Limitations on wagers.
 - b) **New Section WAC 230-25-045**
Poker tournaments at fund-raising events and limited fund-raising events.
 - c) **Amendatory Section WAC 230-25-050**
Wagering among participants not permitted.
 - d) **Amendatory Section WAC 230-25-325**
Limited fund-raising event – Procedures and restrictions.
14. **Gambling Service Suppliers** **Dave Trujillo, Asst. Director**
Filed on 12-20-05 as a Pre-Proposal Statement of Inquiry (CR-101) under WSR #06-01-083. Filed 08/14/06 as a Proposed Rule Making (CR-102) under WSR # 06-17-084 with a published date of 09/06/06.
 - a) **New Section WAC 230-02-203**
Defining lending agent, loan servicer, or placement agent.
 - b) **New Section WAC 230-02-204**
Defining regulated lending institution.
 - c) **Amendatory Section WAC 230-02-205**
Gambling service supplier defined.
 - d) **Companion Rules Simplification Project Rule**

Amendatory Section WAC 230-03-210

Applying for a gambling service supplier license.

This companion rule was previously adopted, but won't become effective until 01-01-08.

e) Companion Rules Simplification Project Rule

New Section WAC 230-03-211

Defining "Lending Agent," "Loan Servicer," or "Placement Agent"

This new companion rule won't become effective until 01-01-08.

f) Companion Rules Simplification Project Rule

New Section WAC 230-03-212

Defining "Regulated Lending Institution"

This new companion rule won't become effective until 01-01-08.

15. Other Business/General Discussion/Comments from the Public/Adjournment

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RECEIVED

MAY 05 2006

GAMBLING COMMISSION
COMM & LEGAL DEPTPETITION FOR ADOPTION, AMENDMENT, OR REPEAL
OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)

The Office of Financial Management (OFM) has adopted this form for members of the public who wish to petition a state agency to adopt, amend, or repeal an administrative rule (regulation). Full consideration will be given to a petitioner's request. **Please complete the following:**

PETITIONER'S NAME (PLEASE PRINT) ZDI Gaming, Inc., by Joan K. Mell, Miller Quinlan & Auter P.S. Inc.		TELEPHONE NUMBER (INCLUDE AREA CODE) (253) 565-5019	
STREET ADDRESS 1019 Regents Blvd., Suite 204	PO BOX NUMBER	CITY Fircrest	STATE WA
AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE Gambling Commission		ZIP CODE 98466	

Please submit completed and signed form to the "Rules Coordinator" at the appropriate state agency. The agency will contact you within 60 days.

Check all that apply below and explain on the back of this form with examples. Whenever possible, attach suggested language. You may attach other pages if needed.

☐ 1. NEW: I am requesting that a new WAC be developed.

I believe a new rule should be developed.

- ☐ The subject of this rule is:
☐ The rule will affect the following people:
☐ The need for the rule is:

☒ 2. AMEND: I am requesting a changing to existing WAC 230-30-070; 230-12-050

☐ 3. REPEAL: I am requesting existing WAC _____ be removed.

I believe this rule should be changed or repealed because (check one or more):

- ☐ It does not do what it was intended to do.
☐ It imposes unreasonable costs.
☐ It is applied differently to public and private parties.
☐ It is not clear.
☐ It is no longer needed.
☐ It is not authorized. The agency has no authority to make this rule.
☐ It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known:

☐ It duplicates another federal, state or local law or rule. Please list number of the duplicate law or rule, if known:

☒ Other (please explain): The accounting controls inherent to cash card technology provide a regulatory enhancement to an area of gaming vulnerable because it is an easily corrupted cash system. Currently, there is no accounting for the cash exchange required to play pull-tabs. Changing the rules to specifically authorize the use of cash card technology in pull-tab gaming for low-tier winners (under \$20.00) provides a meaningful regulatory opportunity without expanding gaming. (See attached staff testimony.) Gambling Commission Staff has already approved use the use of cash card technology for the purchase of pull-tabs and other cash equivalents such as gift certificates, pull-tabs and gambling chips to be awarded as prizes. (See attached e-mails and field operation rule interpretation.) The amendments proposed in this request would update the rules to be in compliance with actual practice in the field. In fact, the Gambling Commission Staff has proposed the precise amendment included in this request to WAC 230-12.050. The additional requested amendment to WAC 230-30-070 is necessary to ensure the regulatory controls apply to not only the purchase of pull tabs, but to the awarding of low-tier prizes as well. Use of cash card technology in conjunction with pull-tab dispensing equipment does not transform the approved equipment into prohibited gambling devices because the technology does not alter the paper pull-tab, which controls the prerequisite "element of chance." (See attached ALJ opinion.) The continued viability of commercial stimulants such as pull-tab gaming depends upon innovation, such as gift card/cash card technology.

PETITIONER'S SIGNATURE

DATE

5-7-06

WAC 230-30-070

Control of prizes — Restrictions — Bonus prizes — Displaying — Procedures for awarding.

Punch board and pull-tab prizes shall be closely controlled to ensure players are not defrauded.

(1) All prizes from the operation of punch boards and pull-tabs shall be awarded in cash, ~~gift certificate~~, or in merchandise. ~~Any cash prize of twenty dollars or less may be awarded on a gift card.~~

No licensee shall offer to pay cash in lieu of merchandise prizes Which may be won.

(2) Additional chances on a punch board or pull-tab game may not be awarded as a prize. Provided, That prizes may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab game as set forth in subsection (4) of this section.

(3) A bonus prize is a prize offered in a bonus pull-tab game, defined in WAC ~~230-30-040~~(1). A step-up prize is a prize offered on a punch board. The awarding of these prizes involves an immediate, additional opportunity to advance to a section of the game to determine the prize.

(4) On games where players advance, the bonus or step-up prizes may not be less than the highest prize available, which might otherwise have been won by the punch or pull-tab for which the opportunity was awarded. Each punch board or pull-tab game offering bonus or step-up prize\$ must clearly indicate on its flare the terms and conditions under which the bonus or step-up prize may be won, including the amount of the bonus or step-up prize.

(5) The licensee shall display prizes so that a customer can easily determine which prizes are available from any particular punch board or pull-tab series or device operated or ~~located~~ upon the premises. In addition, the following requirements apply.

(a) Merchandise prizes shall be displayed as follows:

(i) In the immediate vicinity of the punch board or pull-tab series and in plain view: Provided, That games that offer merchandise prizes that are "surprises" may be wrapped in some way so players are unable to identify what the prize is until opened;

(ii) If size or space constraints do not allow the prize to be dispdyed as provided in (a)(i) of this subsection, the merchandise prize may be displayed elsewhere on the premises provided that a specific reference to that actual prize is noted on the flare; or

(iii) If the merchandise prize cannot be displayed on the premises, an accurate description and/or photograph of the prize must be displayed in plain view on or immediately adjacent to the flare.

(b) Cash prizes shall be clearly represented on the prize flare;

(c) Combination cash and merchandise prizes must meet the requirements of both (a) and (b) of this subsection;

(6) The following procedures apply to the removal of prizes from the game flare and the presentation of prizes to winning players:

(a) Upon determination of a winner of a merchandise prize, the licensee shall immediately remove that prize from the flare and present the prize to the winner upon demand;

(b) Upon determination of a winner of any cash prize over twenty dollars, or of any merchandise prize with a retail value over twenty dollars, the licensee shall permanently and conspicuously delete all references to that prize from any flare, punch board, or pull-tab dispensing device upon which such reference may appear, and from any other list, sign, or notice which may be posted, in such a manner that all future customers will know the prize is no longer available. On step-up punch boards and bonus pull-tab games, onde all opportunities in a section of the flare have been won, all references to prizes no longer available to be won must be deleted on the flare. Operators may correct an inadvertently deleted prize by noting on the flare that such prize is still available. Such reference shall be permanently and conspicuously deleted when the prize is actually awarded. Failure to permanently and conspicuously delete a prize from the flare may result in the director initiating actions to revoke a license for violation of RCW 9.46.190 (defrauding a participant). The prize shall be paid or delivered to the winner only after all reference

to such prize has been deleted from the flare.

(7) Payment of prizes. The licensee must pay or award to the customer or player playing the punch board or pull-tab series all such prizes that are required to be, but have not been, deleted from the flare when the punch board or pull-tab series is completely played out.

(8) Record of winners. When any person wins a cash prize of over twenty dollars or wins a merchandise prize with a retail value of more than twenty dollars from the play of any punch board or pull-tab series, the licensee or licensee's representative shall make a record of the win. The record of the win shall be made in the following manner:

(a) The winners shall be required to print their name and date of birth, in ink, upon the side of the winning punch or tab opposite the winning symbol(s);

(b) The licensee or their representative shall then verify the winner's identity and record the date and initial the winning punch or tab; and

(c) If the pull-tab or punch is constructed or printed in such a manner as to preclude recording the information required in (a) and (b) of this subsection in a legible manner, the licensee may record the required information on a sheet of paper not less than three inches by five inches and staple the winning tab or punch thereto.

(9) Defacing winning punches or tabs. The licensee shall, within twenty-four hours after a winning pull-tab or punch worth more than twenty dollars has been presented for payment, mark or perforate the winning symbols in such a manner that the pull-tab or punch cannot be presented again for payment

(10) Spindle, banded, or "jar" type pull-tabs played in a manner which awards merchandise prizes only. Pull-tab series which award only merchandise prizes valued at no more than twenty dollars, are hereby permitted to employ schemes whereby certain predesignated pull-tabs are free or the player is otherwise reimbursed the actual cost of said pull-tabs. Flares for spindle-type pull-tabs operated in this manner shall designate the total number of pull-tabs in the series and the total number of pull-tabs designated as free or reimbursable. Free or reimbursable pull-tabs in these types of pull-tab series shall not constitute a prize or prizes nor shall moneys collected and later reimbursed constitute revenue for the purposes of determining gross gambling receipts.

[Statutory Authority: RCW 9.46.070. 00-21-095 (Order 389), § 230-30-070, filed 10/18/00, effective 1/1/01; 98-15-074 (Order 359), § 230-30-070, filed 7/15/98, effective 1/1/99. Statutory Authority: RCW 9.46.070 (5), (6), (11), (14), 97-14-012, § 230-30-070, filed 6/20/97, effective 7/21/97. Statutory Authority: RCW 9.46.070, 9.46.120, 9.46.0273, 9.46.310 and 34.05.313, 96-24-006 (Order 305), § 230-30-070, filed 11/21/96, effective 1/1/97. Statutory Authority: RCW 9.46.070 (1)-(4), (7), (8), (11), (12), (14), (20) and 9.46.110 (3), (4), 95-23-109 and 95-24-048, § 230-30-070, filed 11/22/95 and 11/30/95, effective 1/1/96. Statutory Authority: RCW 9.46.070, 94-23-094, § 230-30-070, filed 11/17/94, effective 1/1/95. Statutory Authority: Chapter 9.46 RCW, 91-21-053 (Order 228), § 230-30-070, filed 10/15/91, effective 11/15/91. Statutory Authority: RCW 9.46.070, 90-24-005 (Order 218), § 230-30-070, filed 11/26/90, effective 12/27/90. Statutory Authority: RCW 9.46.070 (11) and (14), 90-11-058, § 230-30-070, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 34.05.220(4), 34.05.230 and 9.46.070 (11) and (14), 90-05-032 (Order 205), § 230-30-070, filed 2/14/90, effective 3/17/90. Statutory Authority: RCW 9.46.070 (11) and (14), 89-17-056 (Order 196), § 230-30-070, filed 8/15/89, effective 9/15/89. Statutory Authority: RCW 9.46[.070] (8), (14), 87-17-052 (Order 171), § 230-30-070, filed 8/18/87. Statutory Authority: Chapter 9.46 RCW, 87-03-023 (Order 164), § 230-30-070, filed 1/13/87. Statutory Authority: RCW 9.46.1070 (1), (2) and (11) and 9.46.1110, 85-21-046 (Order 154), § 230-30-070, filed 10/14/85. Statutory Authority: RCW 9.46.070 (8), (11) and (14), 85-03-024 (Order 142), § 230-30-070, filed 1/9/85. Statutory Authority: RCW 9.46.070 (8) and (11), 82-01-065 and 82-03-033 (Order 115 and 116), § 230-30-070, filed 12/18/81 and 1/18/82; 81-21-033 (Order 114), § 230-30-070, filed 10/15/81. Statutory Authority: RCW 9.46.070(10), 79-09-029 (Order 91), § 230-30-070, filed 8/14/79; Order 43, § 230-30-070, filed 11/28/75; Order 29, § 230-30-070, filed 1/23/75; Order 27, § 230-30-070, filed 11/15/74; Order 23, § 230-30-070, filed 9/23/74; Order 14, § 230-30-070, filed 3/27/74; Order 12, § 230-30-070, filed 2/14/74; Order 5, § 230-30-070, filed 12/19/73.]

WAC 230-12-050

Extension of credit, loans, or gifts prohibited – Limited exception.

No licensee, member or employee thereof shall extend credit, make a loan, or grant a gift to any person playing in an authorized gambling activity, or which enables a person to play in an authorized gambling activity.

Gifts prohibited -- Exceptions.

(1) Gifts are items licensees give away to its customers and are not connected to gambling activities regulated by the commission. Licensees shall not offer gifts in conjunction with gambling activities, with the following exceptions:

- (a) Promotions are allowed as authorized by WAC 230-12-045;
- (b) Transportation services provided to and from gambling activities;
- (c) Free or discounted food, drink or merchandise may be provided under the following conditions:
 - (i) The actual cost of any individual item may not exceed five hundred dollars;
 - (ii) The merchandise shall not be traded back to the licensee for cash or be used to further participate in an authorized gambling activity;
- (d) For each individual gift with an actual cost over one hundred dollars, charitable and nonprofit organizations shall prepare and maintain a written record with the following information:
 - (i) How the recipients of the gifts were selected;
 - (ii) The number of gifts awarded; and
 - (iii) The total cost of each gift given.

Credit and loans prohibited -- Exceptions.

(2) The consideration required to participate in the gambling activity shall be collected in full, by cash, check, gift certificate, gift card, or electronic point-of-sale bank transfer, prior to participation, with the following exceptions:

Punch boards/pull-tabs.

(a) The consideration paid for the opportunity to play a punch board or pull-tab series may be collected immediately after the play is completed only when such consideration is ten dollars or less;

Charitable/nonprofit organization's billing system for members.

(b) When a bona fide charitable or bona fide nonprofit organization conducting any of the activities authorized by chapter 9.46 RCW or commission rules has a regular billing system for all of the activities of its members with such organization, such billing system may be utilized in connection with the playing of any of the activities authorized hereunder if:

- (i) The playing of such activity is limited to regular members of such organization who have become regular members prior to the commencement of such activity and whose qualifications for membership were not dependent upon, or in any way related to, the playing of such activity; and
- (ii) The director has given prior written consent to the use of such billing system in connection with the conduct of activities authorized under these rules.

Raffle tickets purchased with credit cards.

(c) Charitable or nonprofit organizations utilizing credit cards, issued by a state and/or federally regulated financial institution, for payment to participate in raffles.

303), § 230-12-050, filed 11/21/96, effective 12/22/96. Statutory Authority: RCW 9.46.070. 94-13-099 (Order 253), § 230-12-050, filed 6/15/94, effective 7/16/94. Statutory Authority: RCW 9.46.070 (11), (14) and 9.46.0218 [9.46.0281]. 89-05-024 (Order 186), § 230-12-050, filed 2/13/89; Order 51, § 230-12-050, filed 4/30/76; Order 15, § 230-12-050, filed 4/17/74; Order 5, § 230-12-050, filed 12/19/73.]

Positive Points of Cash Card Technology (Rebuttal to Day Briefing Materials)

- Cash card technology is common, and is not novel to gaming.

A survey released by ValueLink, which creates gift cards for companies, estimated that in 12 months, 64 percent of American adults (139 million people) either bought or received a gift card, up from just 37 percent in 2002.

See also attached article from the National Restaurant Association.

Cash card technology is regulated under state law, and is referred to as stored value cards. RCW 19.240. Stored value cards retain their value and any value below five dollars must be redeemed by the vendor. RCW 19.240.020(3). Stored value cards are exempt from the Uniform Money Services Act of 2003, a state law that addresses money laundering passed after the federal Bank Secrecy Act. RCW 19.230.020. The market manages the risk of money laundering. The monetary value consumers are willing to invest with any one particular vendor results in low card values. Consumers are not buying cash cards valued at hundreds of dollars.

Of significance, the cash card technology proposed to date works with low tier winners only. A winning pull-tab of more than \$20.00 could not be recognized on a cash card because the cashier is required under current rules to mark off the flare. The ability to accumulate multiple \$19.99 wins on one card is remote given the simple statistical odds of pull-tab gaming with low tier winners. A player committing the time and resources to achieve multiple low tier winners in one day would draw the undesirable attention of the casino owner, who could opt to report the unusual activity. Furthermore, the casino would expect the player to purchase food, beverages or other merchandise from the cash card. The casinos would not be cashing in the card for currency until the balance fell below \$5.00.

The Gambling Commission has been regulating cash card technology since 1998 when it negotiated and approved Appendix X. Class III equipment relies upon the accounting systems approved by the Commission staff. Section 2.3 defines "electronic accounting system" as "A computer system that provides a secure means to receive, store and access data and record critical functions and activities, as set forth in Section 7.0." Section 7.0 sets forth eight separate sections that in essence require the system to generate certain reports for various games, retain specified data, and take some specific security precautions.

In addition to Class III gaming, cash card technology is utilized with Class II gaming equipment, typically characterized as "technological aids" to legal gambling such as bingo and pull-tabs. The use of cash card technology that credits winnings to the card has been approved by the National Indian Gaming Commission, and its use with electronic gaming equipment does not transform the equipment into an illegal gambling device under the Johnson Act/Gambling Device Act. If the Gambling Commission determines use of cash card technology makes the equipment a prohibited gambling device under state law then the Class II gaming equipment on Indian Lands is also prohibited.

The Commission has no authority or legal justification to contradict the federal definition of Gambling Device.

- Cash alternatives are routinely accepted for gaming.

WAC 230-40-552 permits use of vouchers for table games.

Staff has authorized use of chips as a "cash equivalent" for purposes of cashing out pull-tab winnings. See, internal memo attached hereto.

Staff has authorized use of cash cards with pull-tabs. See, internal memos regarding the Buzz Inn.

Gift certificates are used to redeem winnings on pull-tabs. See attached Field Operation Rule Interpretation.

Pull-tabs are used to purchase pull-tabs and credit winners. "Put-back": See attached testimony of Dallas Burnett.

The important consideration is that cash or a cash equivalent is used, rather than credit. Cash card technology does not cause involve credit.

- Accounting systems are inherent to the cash card technology. The Commission Staff have the discretion to ask for certain reports or retention of data for their examination and records. The technology provides opportunity to staff to improve security and regulatory control. Cash card technology would provide more efficient regulatory oversight, rather than additional oversight. Appropriate regulation is already mandated under the law, but is not currently achieved given limitations on keeping track of the pull-tab activity. WAC 230-30-050 WAC 230-08-025.
- If the federal Bank Secrecy Act is applicable to transactions involving cash cards, then the applicable reporting requirement is an affirmative regulatory control that would benefit the Commission's security goals. Staff's concerns regarding possible criminal activity with cash card technology is inconsistent with its own rule proposal. Money laundering is easier under the staff's proposed rule that would allow use of cash cards to participate in gambling, but not to credit wins. Obviously once the cash is transferred to the card, the money is laundered when the gambling winnings are redeemed, which under the staff rule proposal would occur without any record. A player would buy a cash card, gamble the value of the card, and collect winnings in clean cash. If winnings were credited to a cash card there would be a record of it, and the customer would be expected to redeem the cash value of the card in merchandise. A customer would be reluctant to put high values on a card. Any vendor offering high value cards for low stakes gaming should be held accountable and the record would exist to enforce it. At tribal venues the script system is far more susceptible to money laundering; however it is readily available to the public, with apparently no concerns as the technology is regulated by the

Commission Staff. Questions regarding taxation, reporting, and accountability should be compared to current systems that lack the available accountability inherent to cash card technology. The materials presented do not include a comparative analysis.

- The objection that customers would spend more money on gambling with cash card technology is offered without any supporting documentation of any kind. However, if the proposition is correct, why should the Gambling Commission staff oppose profitable legal gaming? Legal gaming should be successful; otherwise there is no basis to allow the gaming whatsoever. Absent innovations and improvement, the value of gaming as a commercial stimulant is jeopardized. Such a position directly contravenes the policy precedents set forth in the gambling statutes.
- Section II of Attachment "A" page 3 of 6 from the Commission Staff's brief sets forth a novel criterion for determining whether equipment is a gambling device, which is not contained in the law. Apparently the question presented was "Whether the mechanism of placing cash prizes (as presented in the petition) from gambling activities on a gift card[s] creates a gambling device pursuant to RCW 9.46.0241? The answer given was it depends upon whether the mechanism is an "automatic process." No law is cited for this proposition.
- The record in the ZDI Gaming, Inc. matter should be considered and reviewed in its entirety prior to taking any action that would suggest the Commission believes cash card technology makes approved equipment a gambling device. Omitted from the analysis received is the federal position with respect to Class II equipment and the NIGC analysis of "technological aids" to approved gaming. The federal government has already permitted the use of cash card technology with equipment similar to the ZDI submittal, and has determined such equipment is not a "gambling device" under the federal definition. There is no policy basis to interpret the state definition as distinct from the federal definition. Also omitted is any factual summary describing the fact that more than a thousand such devices operate already in this state. The staff's expert on technology, Mr. Dallas Burnett, acknowledges the benefits of cash card technology and contends the ZDI proposal does not present a risk of an expansion of gambling. See attached testimony of Dallas Burnett.



Gift cards becoming a popular option for restaurants, patrons

May 23, 2005 --

Electronic gift and spending cards are quickly becoming a popular payment method and guest-retention tool in restaurants.

Ten years ago, "the purpose [of electronic gift cards] was simply to replace gift certificates" that are easily lost, stolen or damaged, said NRA Show education-session panelist, Karen Larsen, vice president of global marketing and business development for electronic spending-card-maker ValueLink, a First Data company.

Today, Larsen said, gift and spending cards are becoming more of a way of life. An estimated 70 percent of American adults have used an electronic gift card, she said. And as more quickservice restaurants begin offering credit- and debit-card payment options, customers are becoming more acquainted with using plastic in restaurants of all types on a regular basis.

Session panelists said they're also seeing more people using spending, or stored-value, cards. People can add money to these, and use them in lieu of credit cards or cash.

Larsen spoke during a Sunday session at the National Restaurant Association Restaurant, Hotel-Motel Show titled "Value of Growth of Gift/Spending Cards in the Food Service/Restaurant Industry."

Food and beverage giants such as Chipotle and Starbucks offer re-loadable spending cards, for customers who value speedy service and want to avoid trading dollars for change. Larsen said. And because the price is going down, investing in spending cards is becoming more feasible for smaller operations, she added.

From the restaurateur's end, customers using gift or spending cards may end up spending more over time. "When someone gets a card for themselves, it is not uncommon for them to reload it," Larsen said.

Chipotle's Joe Strupp, who joined Larsen for the panel, said the use of cards in his company's 440 stores has "gone gangbusters ... the gift-card program has been extremely [popular]," he said.

Adam De Malignon, sales director for Salt Lake City-based Gift Card Solutions, said today's gift card programs can also help operators capture more data through loyalty initiatives. The electronic card maker, whose clients include Applebees and Auntie Anne's, says his company helps restaurants set up "point systems" and demographic databases for repeat customers.

"There's huge marketing potential with the loyalty program," he said. -- by Marisa Torrieri



reg Thomas

From: Dallas Burnett
 Date: Friday, July 22, 2005 10:07 AM
 To: Amy Blume Hunter
 Subject: ***** Opinion Requested (CLD) *****

History:

ZZ Inn Steakhouse a pull tab licensee, has a gift cash card that is available for their patrons. Patrons can buy drinks, food or other products or consumables with this card or cash in this card for cash. They have in the past allowed purchase of tabs on this card.

Current application:

Currently we have a submission in the lab, which is a pull tab dispenser/reader. The manufacturer has integrated a gift card/cash system which allows credits to be displayed on the terminal and accumulated or subtracted from the card. Winning tickets under \$20.00 are accepted by the machine, combinations displayed and the patron card account is credited the value of the winning tabs. Furthermore, winning tickets over the \$20.00 win require the operator to interact with the terminal and record information required on the winning tab before crediting the patrons gift cash card.

Applicable statutes:

AC 230-12-050 (2)

AC 230-30-070 (1)

Current practices:

They have allowed in the past, gift cards to be used in purchasing pull tabs.
 They interpret a gift cash card as a cash equivalent.
 They have allowed for winning tabs to be credited back on the card account.
 They interpret a gift cash card as a cash equivalent.

Questions:

1. Can a device be used to pay the player for winning tabs?
 - a. Can a device pay by crediting a gift cash card?
2. Can a device be played using a credit gift card?
3. Can the same device, which dispenses the pull tab and displays a pull tab, cash a winning ticket?

ET Opinion:

1. There are no restrictions for this function in statute and the team does not believe it would be an expansion of gambling. It still requires operator interaction for winning tabs over \$20.00.
 - a. If we interpret this as a cash equivalent.
2. If we accept it already.
3. Same as 1.

Dallas Burnett, CCIA
 Administrator, Electronic Gambling Lab
 Washington State Gambling Commission
 "Protect the public by ensuring that gambling is legal and honest"
 60, 3-3503



WASHINGTON STATE
GAMBLING COMMISSION

Field Operation Rule Interpretation

Question: May an operator use gift certificates to their establishment on a merchandise pull tab game? Yes. However, they will not be included in the calculation for purposes of the 60% payout requirement.

CITE: WAC 230-30-080 – Punchboard and pull-tab series restrictions – Prizes, size of game and location of winners

SUMMARY

Issue:

Licensees want to be able to issue gift certificates as prizes on pull tab games. The issue is how to calculate the 60% minimum payout requirement. The rule allows for licensees to offer merchandise prizes. When calculating the possible 60% payout requirement, the operator uses the amount actually paid by the operator plus 50%. But when issuing gift certificates to their own establishment, there is no way to know what the cost is to the licensee until the certificate is redeemed.

Reasoning:

WAC 230-30-080 says in part, "...total merchandise prizes shall be computed at the amount actually paid by the licensed operator plus fifty percent of that actual cost...". Since the actual cost of the certificates cannot be determined at the time the game is placed out for play, the value of the certificates cannot be used in the 60% payout calculation.

Although it may seem reasonable, there is no basis in the rule to allow the operator to use the face-value of the gift certificates in the 60% payout calculation.

Decision:

Gift certificates from a licensee's own establishment may be used as add-on prizes for a "happy hour" pull tab game as described in WAC 230-30-106(7). These gift certificates may also be used as merchandise prizes for pull tab games but will not be used in the 60% payout calculation.

proved:

Cally Cass
Cally Cass, Assistant Director
Washington State Gambling Commission

Date:

7/22/05

Sonja Dolson

From: Susan Blanchett
Sent: Monday, February 07, 2005 11:23 AM
To: Lisa Saila
Subject: Jeannette Sugai; Paul Swortz; Roger Sauve; Sonja Dolson
Casino chips awarded as P/T prizes?

Thanks for looking into this Lisa. We'll go ahead and tell the licensee they can do this (Roger may have to work with them on the cage "paid out" procedures for the chips).

Thanks again,
Susan B.

From: Lisa Saila
Sent: Monday, February 07, 2005 11:16 AM
To: Susan Blanchett
Subject: FW: Casino chips awarded as P/T prizes?

Susan:

Please read Gary response below. It sounds like this has already been authorized. I have only heard back from one PM, so you can allow the licensee to do it or wait. They have already approved it in the East.

Thanks,

Lisa

From: Gary Drurnheller
Sent: Monday, February 07, 2005 10:56 AM
To: Lisa Saila
Subject: RE: Casino chips awarded as P/T prizes?

This issue just came up the other day over here so I had to ask Bill if he wrote this and he said it wasn't him. Anyway, we discussed this exact issue and felt that it is ok as long as the PT area can account for the chips and set up some type of procedure. We looked at this as being no different than cash. We did not think this qualified as a merchandise board since the chips actually have a cash face value already, so it can not be converted to meet our merchandise rule.

Hopefully I answered all the questions!

Gary

-----Original Message-----

From: Lisa Saila
Sent: Monday, February 07, 2005 8:52 AM
To: Greg Thomas; Gary Drurnheller; Paul Swortz
Cc: Cally Cass
Subject: FW: Casino chips awarded as P/T prizes?

I have received an inquiry from a supervisor. Please read the email below and let me know if you think we should allow this. Please get your response to me by 2/11/05. The chips would be valued as cash with no mark up as mentioned below.

Have you come across anyone wanting to offer casino chips as prizes on a P/T game. The licensee was talking about treating it like a merchandise board, but I think we'd encounter some problems with valuing the chips [the actual cost x 7.5, versus the face value].

Could the chips be treated as a "cash equivalent" and handled ~~that~~ way? Also; the winner would have the option, upon winning the chips, to either gamble with them or cash them out at the cage. (the licensee would have to ~~work~~ out some cage procedures for their chip reconciliations, but we can cross that bridge later, after we determined if they ~~can~~ do this).

I know you've allowed the "recreational chips" to be awarded as prizes, but this is a little different from that.

1 A I think three. Four if you include Bullseye.

2 Q If you include what?

3 A Bullseye. Which is a dispensing sports card game.

4 Q That was a gambling device?

5 A That was. That was a gambling device.

6 Q And you don't have any kind of belief that this is a huge
7 exponential expansion of gambling with this cash card
8 technology?

9 A No, I don't think it's a huge expansion of gambling, I really
10 don't.

11 Q Did you understand when you were reviewing this equipment
12 that put back in occurs frequently? Do you even know what
13 that means?

14 A Put back in? Probably that they reimbursed the tabs, winning
15 tabs with more purchases, probably.

16 Q More tabs?

17 A Yeah. And there's certain rules and requirements regarding
18 the extension - I think it's probably around the extension of
19 credits WAC. And I'm just - you've got to - I'm just
20 remembering something that I've actually seen in there, but
21 there are certain denominatidns that you can actually - and I
22 think it's more associated with pull-tabs - or punch boards,
23 excuse me, where you can punch a number of tabs for an
24 extension of credit or something like that.

25 Q So like - the Gambling Commission does treat the winners

1 different than something major --

2 A I think up to a certain value. But obviously they don't do
3 face over \$20 on the flare.

4 Q You recognize that there's some beneficial security
5 advantages, I think we talked about the cash card, but even
6 the technology itself, having the equipment?

7 A Any advancements in technology happen to make - or either
8 expands the activity or increases the ability to investigate
9 the activity. Log files. I mean, who would envision - let's
10 say the card dealing table that they have or card facsimile
11 table, when it deals out cards to do an investigation, you'd
12 normally have to go through security cameras. Well, that's a
13 technology. Every advancement of technology. Now, if it's
14 the electronic facsimile, I can go to the files on my
15 computer system and pull them up and know where the cards
16 were, you know, so that, yeah, any kind of advancements that
17 you make in any type of activity is going to create
18 opportunity to regulate the activity higher or better.

19 Q And that's your purpose; right?

20 A That's one of my purposes, yes, it is.

21 Q And that is what this upgrade by ZDI could do?

22 A You know what, it's a battle within myself over the activity.
23 If it wasn't - like I said, if the statute had read something
24 differently, I would have looked at it differently and
25 recommended differently.

1 Q Because you don't have any fundamental inherent problem, you
2 actually see some advantages to it?

3 A Sure. But I see advantages in a lot of forms of gambling; I
4 mean, it doesn't make it right or wrong.

5 Q The GET team didn't really get into a discussion about the
6 value of pull-tab gaming and innovation in that arena as it
7 pertains to the RCW that approves it as a commercial
8 stimulant, did it?

9 A No. No, we didn't even look at the RCW.

10 Q It looked to me like in the documents that were produced at
11 the time of your deposition that you actually opined
12 initially and sent out an e-mail indicating that the
13 equivalent was approved, for approval?

14 JUDGE GORRELL: And what are we looking at so that
15 the record is clear? Exhibit 19, page eight. Okay.

16 Q And let me just reference it here. This is an e-mail from
17 you to Amy Blume-Hunter (phonetic) instructing that there are
18 no restrictions for this function in the statute. The team
19 does not believe it would be an expansion of gambling. It
20 still requires operator interaction for winning tabs over
21 \$20?

22 A That is right. That was on - you've got to remember that
23 when we go ahead and we started looking at the device, the
24 first thing that we did was say okay, let's make sure that we
25 cover ourselves and send it to CLD. But that was upon the

MAILED

MAY - 1 2006

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STATE OF WASHINGTON
WASHINGTON STATE GAMBLING COMMISSIONIn the Matter of the Petition for a
Declaratory Order by:

ZDI GAMING, INC.,

Petitioner.

Docket No. 2005-GMB-0041

WSGC No. 2005-01838

INITIAL DECLARATORY ORDER

STATEMENT OF THE CASE

This is an adjudicative proceeding instituted at the request of ZDI Gaming Incorporated (Petitioner), for a *Declaratory Order pursuant* to RCW 34.05.240, and WAC 230-50-850. The Petitioner filed its request for a *Declaratory Order* with the **Washington** State Gambling Commission (**Commission**) on or about September 19, 2005. By order dated October 14, 2005, the **Commission** referred this matter to the Office of Administrative Hearings for an **administrative** proceeding to develop the **record**.

Administrative Law Judge F. Neil **Gorrell** held an administrative hearing on December 1, 2005, at the Washington State **Gambling** Commission (Commission), 4565 7th Avenue **SE, Lacey**, Washington. At the **hearing** the **Commission** Staff (Staff) was represented by Assistant Attorney General Paul Goulding. The **Licensee** was represented by Joan **Mell**, Attorney at Law.

Exhibits¹ 1-20 were offered by the Petitioner in the **course** of the hearing.

Exhibits A-B were offered by the **Staff** in the **course** of the hearing.

¹ A comprehensive Exhibit List delineating which exhibits were admitted, excluded, and withdrawn is attached to this decision as Appendix A.

On March 17, 2006, the Petitioner filed a **Motion to Supplement the Record** with the Office of Administrative **Hearings**. The hearing **record** was reopened, and a **prehearing conference** was **convened** before the undersigned on March 20, 2006. Following the conference, Exhibit 21, **consisting** of **26** pages, was admitted into the **record**. The **record again closed by** stipulation of counsel on **March 21, 2006**.

The issues for determination in this **Initial Declaratory Order are as** follows:

- 1) Is the Petitioner entitled to **relief** in the **form** of a Declaratory Order as outlined in WAC 230-50-850 et. seq?
- 2) Is the Petitioner's VIP pull-tab **dispenser²** a "gambling device" as defined in RCW **9.46.0241(1)**?
- 3) Is the Petitioner's VIP pull-tab **dispenser** in violation of any of the **Commission's** other **rules** which apply to pull-tab devices?

The Petitioner requested attorney fees and **costs** in the administrative proceeding pursuant to the Equal Access to Justice Act, as codified in RCW 4.84.340 et seq. As the Act applies **only** to judicial review of **agency** action, the request is **premature**. RCW 4.84.340; RCW **4.84.350**. This **argument**, however, is explicitly preserved **for** review.

FINDINGS OF FACT

1. Jay Gerow is **one** of three family **owners** of **ZDI** Gaming Incorporated, a gaming supply distributorship licensed by the **Commission**. The company has been in business for 23 years, and Mr. Gerow has 25 years **total** experience in the gaming

Specifically at issue in this matter is **ZDI's** VIP (**Video Interactive** Play) version 3.04. All references in this order to the VIP machine, unless **specifically** delineated otherwise, refer to version 3.04, as **set up** and **demonstrated** at the **hearing on December 1, 2005**. **See** Exhibits **1, 4, A**.

industry. ZDI supplies pull-tabs, **bingo** supplies, **casino** supplies, and "just about anything to do with the gambling industry in the **state** of Washington." RP **88**.³ Mr. Gerow **has** been involved with pull-tabs **and** their associated supplies since approximately 1989.

2. Pull-tabs predate the legalization of gambling in Washington State in 1973. While there are several variations, a standard pull-tab consists of a paper ticket with **one** or a **series** of "**windows**" which conceal **numbers** or **symbols**.⁴ Pull-tabs are an economic stimulant primarily utilized in restaurants, **bars**, facilities such as bowling alleys, and by charities. The tabs are maintained in a dispensing device, or behind the bar in an open bin called a "punch bowl."

3. After purchasing a pull-tab, the player **opens** one of the windows to reveal the symbols below to **determine** if the ticket is a **winner**. For a given pull-tab game, there are a predetermined **number** of winning tabs, A sheet called a flare designates the number of winning tickets, and is **required** to **specifically** list all **available** prizes which exceed \$20. See WAC 230-30-106(4).

4. The economic vitality of pull-tabs **reached** its height in the **1980's**, and has since been in decline. The decline is attributed in **large** part to competing new forms of gambling, including mini **casinos** and the expansion of tribal gaming.

³ Citations to ~~the~~ administrative record are to RP, or "**Report of Proceedings**."

⁴ See WAC 230-02-260, which defines a "pull-tab" as a **single** folded or banded ticket or **card**, the face of which is initially covered or otherwise hidden **from** view to conceal a number, symbol or set of symbols, a few of which numbers or **symbols** **out** of every set of pull-tabs have been designated in advance and at random as prize winners, **when, for** the opportunity to obtain **each such folded or banded** ticket or card, view the numbers or symbols thereon and possibly obtain a prize winning pull-tab, a person pays some **consideration** to an operator.

5. In addition to purchasing pull-tabs **directly** from an employee of the establishment, pull-tab dispensing equipment has **been** authorized by the Commission. The first attempts utilized equipment initially **designed** to vend postage stamps. Over time, this equipment **has** been gradually refined.

6. In an **effort** to make pull-tabs more **appealing** to customers, manufacturers have developed dispensing equipment with **entertainment** features. The first serious effort in this regard was the Gold Crown Machine, **first approved** by the Commission in 1997. This equipment displayed the results of the pull-tab in a video **format** loosely resembling that of electronic slot machines.

7. The first version of **Petitioner's** VIP (**Video** Interactive Play) equipment incorporated a pull-tab dispenser and a pull-tab **reader**. The equipment is an electronically powered stand-alone device featuring **a** pull-tab dispenser, a video monitor display **screen**, and **a** **currency/bill** acceptor. All of these features are housed in an attractive locking cabinet. See Exhibits 1, 2, **10**.⁵ **Inside**, the cabinet houses a number of electronic devices that govern the machine's **operation**, including **various** programmable computer circuit boards which **generate** the video display and track such items as credits remaining. **Id.**

8. The VIP display is intentionally **designed** to emulate a video slot machine. Exhibits 1, 2 Although the machine **contains** no **drums** or spinning reels, the video display contains rows of "spinning" pictures and **simulates** the play of a slot machine

⁵ Exhibit 1 depicts the equipment as set up in the **hearing** room. Machine number one (on the **left**) is the upgraded, unapproved **version**. Machine number two is the **currently** approved version of the equipment. Exhibit 2 **consists** of a **PowerPoint** **series** of photographs depicting use of the equipment. Exhibit 10 **consists** of a **narrative** of the same **operation**.

that would typically be found in a casino. The "reels" contain pictures and various characters that align in winning or losing combinations determined by the bar code on the inside of the paper pull-tab. In addition to appearing like a slot machine, the VIP also emits the "attractor" sounds associated with casinos.

9. To utilize the original VIP equipment, a player inserted currency and pressed a button to dispense the pull-tab. The player would then open the paper pull-tab, and either utilize the reader (along with its slot machine effects), read the inside of the ticket for him or herself,⁶ or take the pull-tab to an employee for verification and payment. This version of the VIP was approved by Executive Director Rick Day on June 10, 2002, Exhibit 19, p. 10.⁷

10. The VIP version 3.04 at issue in this proceeding operates in an identical fashion as the previous version, but incorporates a cash card acceptor. In the new version, a player may elect to use cash, or obtain a cash card from the establishment. Inserting a card displays the credit on that card, and allows the player to hit the dispense button.

11. For winning pull-tabs of \$20 or less, the VIP equipment credits the winnings directly to the inserted cash card as a credit, and retains the winning pull-tab. For winning pull-tabs in excess of \$20, the player is directed by the equipment to seek payment from an employee. If a player stops playing the game before all credit on the

While it is relatively easy to determine if a given pull-tab is a winner based on the additional code on the ticket, determining the amount of the win requires a fair degree of sophistication and familiarity with the game. See Exhibit 11, p. 2 (loser) compared with p. 3 (winner).

⁷ This exhibit was initially offered as Exhibit 19, p. 659.

cash card is extinguished, the remaining credit can be applied toward food, drinks, merchandise, or simply turned back in for cash.

12. The odds of winning for any individual player do not change from the use of a cash card. There are no monetary bonuses for utilizing a cash card. There is no fee associated with use of the cash card.

13. Mr. Gerow credibly testified that he has spent hundreds of hours, and almost a year, developing the VIP equipment. He has also spent countless hours trying to work with the Commission Staff toward approval.

14. William Tackitt is the Chief Executive Officer of 15 entities located in Washington doing business as the Buzz Inn Steakhouse. Exhibit 18. Mr. Tackitt has utilized cash cards in his business, which in part led Mr. Gerow to develop the most recent version of the VIP.

15. The Buzz Inn utilizes a point of sale purchase card good on everything in the restaurant. A Commission Agent in the Spokane Field Office informally approved the point of sale card for the purchase of pull-tabs. exhibit 18. The cards work much as described for the new VIP, and are depicted in pictures in Exhibit 3. The distinction is that while a customer purchases the pull-tabs with a cash card, the sale must be through an employee of the restaurant. Mr. Tackitt has never received formal permission from the Commission as a whole. When first informally approved, Commission Agents allowed winnings to be credited back to the card directly. Following the filing of the Petition in this matter, however, the agents require that customers first convert the winnings to cash. The customer is then free to hand the cash back to the employee to credit to the card. Exhibit 18, pp. 6-8.

16. Mr. Tackitt is aware of no Commission rule or statute **which** would authorize his current use of the cards. Further, he **has** never been authorized to use a cash card to purchase pull-tabs through a machine **or** device, primarily because such a device does not yet exist.

17. Frank Miller **testified on** behalf of the **Petitioner**. Mr. Miller has over 20 years experience in the gambling industry, including positions as both Deputy Director and Director of the Commission. Mr Miller has **practiced** law in private practice with an emphasis in gambling issues since he left the **Commission** in 1997.

18. Mr. Miller reviewed the Petitioner's **request**, along with specifications of the VIP machine. In short, Mr. Miller believes that **the** new device will make pull-tabs more attractive to players, while enhancing **regulatory** control.

19. Dallas Bumett is Administrator for the Electronic Gambling Lab at the Commission. He **is responsible** for all **activities within the** lab, and **has worked** for **the** Commission for 16 years. Mr. Bumett has worked **extensively** with electronic gambling devices for the six years he has run the lab.

20. When first developing the **idea** for the VIP, Mr. Gerow spoke with Mr. Bumett. At the time, Mr. Bumett gave his "initial **feelings**" of the equipment, and was optimistic regarding approval. RP 170-172. Mr. **Burnett** credibly testified, however, that in this initial discussion it was **not made** clear **that the** equipment would credit a player's winnings of \$20 or less directly on the card. In **any** event, **Mr.** Bumett testified that it is not the role of **the** gambling lab to approve or reject **new** electronic gambling devices.

21. At Mr. Burnett's suggestion, the Petitioner formally applied with the Commission for approval of the new VIP equipment on April **1**, 2005. Exhibits 4, A.

The application was placed in the queue of the Gambling Equipment Team (GET team) for processing. The GET team consists of Mr. **Burnett**, along with a supervisor from the tribal regulatory team, and from **field** operations.

22. On August 15, 2005, David **Trujillo**, **Assistant** Director of the Licensing Operations Division, formally denied the Petitioner's **application** by letter. Exhibit **B**.

23. From the foregoing Findings of Fact, **the** following Conclusions of Law are entered:

CONCLUSIONS OF LAW

1. The undersigned Administrative Law **Judge has** jurisdiction over the parties involved and the issues decided herein **pursuant** to WAC 230-50-850(1) as well as RCW 34.05.240(1).

2. When the Washington State **Legislature** adopted the Gambling Act of 1973, it declared that "the public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to **promote** the social welfare af the people by limiting the nature and scope of gambling **activities** and by strict regulation and control," The declaration **concludes** by stating **that "[a]ll** factors incident to the activities **authorized** in this chapter shall be closely **controlled**, and the provisions of this chapter shall be liberally **construed** to achieve such **end**." RCW 9.46.010.

Is a Declaratory Order Appropriate?

3. The first issue is whether the **Petitioner** is entitled to relief in the form of a **Declaratory** Order. WAC 230-50-850 provides the **requirements** to **obtain a** Declaratory Order:

(1) Any person may petition the commiseion for a declaratory order with

respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

- (a) That **uncertainty** necessitating resolution exists;
- (b) That there is actual controversy **arising** from the uncertainty **such** that a declaratory order will not be **merely** an advisory option;
- (c) That the **uncertainty** adversely **affects** the petitioner;
- (d) That the adverse **effect** of uncertain* on the **petitioner** outweighs any adverse effects on others or on the **general** public that may likely arise **from** the order requested.

4. First, where a person submitting **electronic** equipment for approval disagrees with the Director's decision, a **petition** for a declaratory order may be filed to be heard **de novo** by an **administrative** law judge. **WAC 230-12-316(5)**.

5. Even absent the explicit authority cited above, all four elements justifying a Declaratory Order are present in this case. The **parties** stipulated at hearing that uncertainty exists regarding the use of cash cards in the fashion proposed by the VIP equipment. Next, this case presents an **actual controversy** in the **form** of the Petitioner's denied application for approval of the **new** VIP equipment. The time and expense of **working** toward approval, along with the **legitimate threat** that any equipment placed in service without approval is **subject** to immediate seizure adversely affects the Petitioner. Finally, the adverse effect on **the** Petitioner does outweigh the adverse effect on others **from** this decision. In short, it is appropriate to enter a **Declaratory Order**.

Is the WP Machine an Illegal Gambling Device?

6. The **term** "gambling **device**" is defined in RCW **9.46.0241** as follows:

"Gambling device," as used in this chapter, **means**:

- (1) Any device or mechanism the **operation** of which a right to money, credits, deposits or other things of **value** may be created, in return for a consideration, as the result of the operation of an element of chance, including, but not limited to **slot** machines, video pull-tabs, video poker, **and** other electronic **games** of chance;
 - (2) **any** device or mechanism which, when operated for a consideration, does not return **the** same value or **thing** of value for the same consideration **upon** each operation thereof;
 - (3) any device, mechanism, furniture, **fixture**, construction or installation designed primarily for use in **connection** with professional gambling;
- and
- (4) any subassembly or essential part **designed** or intended **for** use in connection **with** any such device, **mechanism**, furniture, fixture, **construction** or installation.

7. Here, the parties have stipulated that **only** the first definition is at issue in this matter. To constitute an illegal **gambling device** under **RCW 9.46.0241(1)**, three elements must be present: a right to money, credit, **or** other thing of value (prize); consideration; and an element of chance. The **device** itself must incorporate all three elements to fit within the definition.

8. **The parties** stipulate that **consideration** is present with the new version of the VIP equipment. A player places currency, in **the** form of cash or a cash **card**, into the equipment. In exchange, the player is entitled to purchase individual pull-tabs, and view the **results** on the video screen. The **equipment** does not issue "free plays," and only **ZDI** pull-tabs **may be** utilized with the **equipment**.

9. There is an element of chance **involved** in all pull-tabs, **including** those dispensed by the **ZDI** VIP **equipment**. In any given Series of pull-tabs, only a

predetermined number will pay a prize. The **element of chance**, however, derives from the pull-tab, not **from** the dispenser or reader. The ZDI VIP equipment itself has no more effect on the element of chance than a more **traditional** punch bowl does. The equipment does not alter the order of the pull-tabs, **or** otherwise give the player **any** advantage not present in **all other forms of** the game. In fact, the Commission has already approved the previous version of the VIP, **which** has an identical dispensing and reading mechanism,

10. Finally is the element of prize. To **constitute** an illegal gambling device, operation of the ZDI **VIP** equipment **itself** must **create** a right to money, credits, deposits or other things **of** value. In interpreting any statutory provision, one must **always** begin with the plain language of that provision. See **e.g. Lacey Nursing Center, Inc. v. Department of Revenue, 128 Wn.2d 40, 53, 905 P.2d 338 (1995)**. Where the language is unambiguous, legislative intent is determined from the language alone. *Waste Management v. WUTC, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994)*. Further, when a regulation contains an ambiguity, courts must give **meaningful** effect to the entire regulation and not render any portion of it **superfluous**, but must also avoid absurd or strained results. **See Fray v. Spokane County, 134 Wn.2d 637, 952 P.2d 601 (1998)**.

11. **Staff** has consistently argued **that** the ZDI VIP equipment "creates money to add **back** to the gift card." **Staff's Brief in Support of Closing Argument, p. 4**. It is, however, the pull-tab which establishes the **existence** and amount of any prize. The equipment merely reads the pull-tab (if requested to **do** so by the player), and saves the player the time required to walk up to an employee **for** a prize of \$20 or **less**.

12. Reading the statute as a whole, "**credits**" is utilized as a noun, not a verb. It is simply another example of "things of value." Thus, to meet the definition, operation of the ZDI VIP equipment **itself** would need to create **the** right to a prize. Whether a player decided to utilize the reader for the added **entertainment** value, took all of the opened pull-tabs directly to employees of the **establishment** for analysis, or learned how to read winning tickets for him or herself, the prize is **solely** created by the pull-tab. In this instance, a slightly larger version of the same, **standard**, paper pull-tab in place and approved all over the state.

13. In short, the ZDI VIP equipment does **not** meet **the** definition of **illegal** gambling device under the statute, and cannot be **denied** on this basis. The element of chance and prize stem solely from the paper pull-tab@not the **dispensing and reading** equipment.

Is Normal Operation of the ZDI VIP Equipment Equivalent to an Extension of Credit?

14. WAC 230-12-050 provides in relevant part:

Extension of credit, loans, or gifts prohibited — Limited exception.

No licensee, member or employee thereof **shall** extend credit, make a loan, or grant a gift **to any** person playing in an **authorized** gambling activity, or which enables a person to play in an **authorized** gambling **activity**.

* * *

Credit and loans prohibited -- Exceptions.

(2) The consideration required to participate in **the** gambling activity shall be collected in full, by cash, check, or **electronic** point-of-sale bank transfer, prior to participation, with the following **exceptions**:

Punch boards/pull-tabs.

(a) The consideration paid for the **opportunity** to play a punch **board** **or pull-tab series** may be collected immediately after the play is completed only when such consideration is ten dollars or **less**;

* * *

15. On its face, **the** ZDI VIP equipment **allows** the purchase of pull-tabs with a cash **card**. As the regulation requires all pull-tabs **to be** purchased with "cash, check, or electronic **point-of-sale** bank transfer", a cash card **must** be equivalent to cash **for** the equipment to comply with the rule. The term "**cash**" is not defined in either the Commission's statute **or regulations**. Black's Law **Dictionary** defines cash as follows:

1. Money **or** its equivalent. 2. Currency or **coins**, negotiable checks, and balances in bank accounts.

Black's Law Dictionary, Seventh Edition (1999). The American Edition of the Oxford Dictionary defines cash as "money in coins or bills, **as distinct** from checks or **orders**." The Oxford Dictionary and **Thesaurus**, American Edition (1996).

16. While the Oxford definition is more restrictive than the Black's definition, what both share is the unifying idea of cash: it has **the** same value and is accepted everywhere. A \$10 bill is legal currency in every **store** in every county of Washington. Negotiable checks also have the same value and **are** accepted **everywhere**.⁸

17. The difficulty with a cash **card** is that **it's only** valid at **one** location. It is impossible to take the cash card from the **B u n** Inn **to** a local Harley **Davidson** dealer and purchase a new helmet. The cash card must **be** converted back into actual cash to

⁸ The undersigned notes that some **establishments** do **impose** additional **limitations** on the use of checks. As long as sufficient funds **exist** in the **account**, **however**, the issuing bank **will honor the check at any establishment**.

be useful at any other location. Even if the cards do **not** expire, and the issuing **merchant** is required to convert the remaining balance on a card **to** actual cash upon request, cash cards are not cash because they require an additional step on the part of the consumer to utilize in any other location.

18. The Petitioner argues that the **existence** of the informal approval granted to the Buzz Inn, along with a handful of similar **exceptions**, should somehow take precedence over the **language** of **the regulation**. **There** is **no** evidence in the **record** that the Commission **has** ever officially authorized the use of a cash card for pull-tab purchases.

19. The Petitioner also **asserts** that the **cash** cards pose no legitimate regulatory threat because a related system is in use **in** tribal facilities. The tribal lottery systems, as governed by compact, Appendix X, and various state and federal **laws**, are entirely independent from **the** non-tribal pull-tabs at **issue** in this matter. As pointed out by Frank Miller in his testimony, "regulatory controls for [tribal] systems are governed by compacts, not administrative code provisions." RP 39.

20. The Petitioner asserts that the **ZDI** VIP equipment allows for better regulatory control. This is in the form of a better **audit** trail, less handling of money, better opportunity for automated reports, and **less opportunity** for employees to make mistakes or outright steal from the system. The **Petitioner** also points out that cash cards did not exist when the rule was written, and **the** "evil" sought to be avoided by the rule is a debt to the house for gambling. Such indebtedness 'to the house' is not likely with the cash card system.

21. While these may be legitimate **arguments**, and the cited rule could not

have directly contemplated the use of cash cards, **I must** apply the regulation as written.

The Commission is free ~~withi~~n their discretion to amend the rule to comply with their current policy decisions, as appropriate. As currently written, however, the **ZDI VIP** equipment violates this regulation.

Does the VIP Machine Inappropriately Award Prizes?

22. WAC 230-30-070 **provides** in relevant part:

Control of prizes — Restrictions — Bonus prizes — Displaying — Procedures for awarding.

Punch ~~board and~~ pull-tab prizes shall be **closely** controlled to ensure **players** are not defrauded,

(1) All **prizes** from the operation of punch ~~boards~~ and pull-tabs shall be awarded in cash or in merchandise.

23. The ZDI VIP equipment violates this rule for the same reason it violates WAC 230-12-050(2). While both the value and existence of the prize are determined solely by the pull-tab itself, ~~the~~ equipment at issue automatically applies prizes of \$20 or less to the cash card. As noted above, a ~~cash~~ card ~~is~~ not cash. While it might be tedious at best for a player to seek an employee for payment for every prize of as little as a dollar, that is what the regulation requires.

Staffs Other Concerns

24. WAC 230-30-050 provides in ~~relevant~~ part:

Punch board and pull-tab operating restrictions and dispensing limitations.

The following operating restrictions and **dispensing limitations** apply to punch boards and pull-tabs:

(1) No person under the age of eighteen years and no person visibly intoxicated or visibly under the influence of **any** narcotic, **shall** be allowed to play or sell any punch board or pull-tab **series**. It shall be the responsibility of both the licensee and the person physically operating the punch board or pull-tab series to determine and ensure **that** no unauthorized person is allowed to play or sell.

* * *

25. The use of any equipment to dispense a product, **from** cigarettes to condoms to pull-tabs, removes some control. At hearing, the Staff preserved this argument, but conceded that these concerns do not by themselves rise to a level which would deny approval of the **ZDI** VIP equipment. In **fact**, the already approved version of the VIP equipment, which merely lacks the card **reader**, would be subject to the same **concerns**. There appears to be nothing significant about the addition of the card reader per se that **would** increase the risk of underage **and/or** intoxicated persons purchasing pull-tabs.

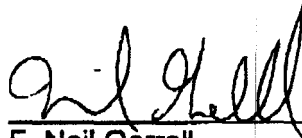
INITIAL DECLARATORY ORDER

IT IS HEREBY DECLARED and ORDERED that under **the** law of the State of Washington:

1. The Petitioner is entitled to relief in **the** form of a Declaratory Order as outlined in WAC 230-50-850 **et. seq.**
2. The Petitioner's VIP version 3.04 equipment is not an illegal "gambling device" as defined in RCW **9.46.0241(1)**.
3. The Petitioner's VIP version 3.04 equipment is in violation of WAC 230-12-050(2), and WAC 230-30-070(1).
4. The Commission was **justified** in **denying** approval for the equipment

based on violation of the above regulations, but has the inherent authority to revise the **rules** to better comport with the modern realities of the industry if it elects to do so.

DATED at Olympia, Washington, on the date **of** mailing.



F. Neil Gorrell
Administrative Law Judge
Office of **Administrative** Hearings

NOTICE TO PARTIES

Pursuant to the Washington State Gambling **Commission** Rules. WAC 230-50-560, WAC 230-50-200 and WAC 230-50-210, **you have** twenty-three days from the date this initial order was **mailed** to file an appeal of **this** order known as a "petition for **review**". The petition for review should specify the **parts** of the initial order which you disagree with and should refer to the evidence in **the** record that supports your position. If you decide to petition for review, you must **serve** copies of your **petition** on all parties or their representatives at the same time you file **it** with the Gambling Commission. If a petition for review is not **received** by the Gambling **Commission** within 23 days of the date this initial order was mailed, the Commission **will automatically** adopt this order, and it will thereby become final.

Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must **serve** copies of the reply on all parties or their representatives at the **same** time you file **your** reply.

Any party may file a cross appeal. Cross **appeals** must be filed with the **commission** within ten days of the date when the **petition** for review was filed with the Commission, pursuant to WAC 230-50-560 and WAC 230-50-210. If you wish to make a **cross appeal**, you must **serve** copies of the cross **appeal** upon all other parties or their representatives at the same time you file your **cross** appeal.

If a petition for review is timely filed with the **commission**, then at least a majority of the **Commission** members shall review the **petition** within one hundred and twenty days after the petition is filed and render a final **order**.

This *Initial Declaratory Order* was mailed to:

PETITIONER:

ZDI Gaming, Inc.
2124 - 196th Street SW
Lynnwood, WA 98036
(by mail only)

PETITIONER REPRESENTATIVE:

Joan K. Mell, Attorney at Law
Law Offices of Miller, Quinlan & Auter, P.S., Inc.
1019 Regents Blvd, Suite 204
Fircrest, WA 98466
Telephone: (253) 565-5019
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ASSISTANT ATTORNEY GENERAL:


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FAX (360) 664-0229

Washington State Gambling Commission
Communications and Legal Department
PO Box 42400
Olympia, WA 98504-2400
FAX (360) 486-3625

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I hereby **certify** that I have **this** day **sewed** a **copy** of **this** document upon all parties of record in this **proceeding** by mailing a copy thereof, properly addressed with **postage** prepaid, to each party to the **proceeding** or **his** or **her** attorney or **authorized** agent.

Dated at **Olympia, Washington**, this 1st day of May, 2006.


Representative, Office
of Administrative Hearings

APPENDIX A EXHIBIT LIST

CASE NAME: In Re the Matter of the Petition of **ZDI Gaming, Inc.**

Docket No(s): 2005-GMB-0041; CR 2005-01838 Hearing Date(s): 12/1/2005; 3/20/2006				
EXHIBITS:				
Exhibit Number	Description of Exhibit	Number of Pages	Admitted?	Offered by
1	Photographs of ZDI Equipment as set up in the hearing room on 12/1/2005	3	X	Pet
2	Hard copy of PowerPoint presentation depicting operation of equipment	5	X	Pet
3	Hard copy of PowerPoint presentation depicting current use of cash cards for pull-tab gaming	3	X	Pet
4	Petitioner's application for approval of the VIP Version 3.04	4	X	Pet
5	Meeting Minutes from the Gambling Commission meeting of July 10 1997 (w/ audio tape)	10	X	Pet
6	AGO Opinion AGO 1999 No. 7	9	X	Pet
7	Meeting Minutes from the Gambling Commission meeting of October 14, 2005	8	X	Pet
8	Commission Letter dated August 15, 2005 rejecting approval	2	X	Pet
9	Bio of witness Jay Papillon	1	W/D	Pet
10	Description of VIP equipment	3	X	Pet
11	Pull-tab examples from VIP equipment	3	X	Pet
12	Hard copy of PowerPoint presentation as demonstrative exhibit of amusement games	3	X	Pet
13	Deposition of Dallas Burnett	124	X	Pet

Exhibit Number	Description of Exhibit	Number of Pages	Admitted?	Offered by
14	Deposition of Sonya Dolson	84	X	Pet
15	Deposition of Cathy Harvey	108	X	Pet
16	Deposition of Greg Thomas	82	X	Pet
17	Declaration of Frank Miler	9	X	Pet
18	Declaration of William D. Tackitt	8	X	Pet
19	Selected Deposition Exhibits and supplemental documents (reduced from the original submitted Exhibit 19 by agreement of the parties)	10	X	Pet
20	Exhibits regarding Attorneys Fees and Costs	n/a	WID	Pet
21	Materials Pursuant to Petitioner's Motion to Supplement the Record	26	X	Pet
A	Petitioner's application for approval of the VIP Version 3.04	4	X	GMB
B	Commission Letter dated August 15, 2005 rejecting approval	2	X	GMB

Note * Exhibit 19, as initially submitted, is included for the official **record**. Of the **total** 804 pages initially proposed, only the **10 pages** in **Exhibit 19** were admitted.¹

¹ By agreement of the parties, Exhibit 19, pp. 8; 21; 83-85: 561-562; **583-584**; 659 were admitted. Exhibit 19. p. 22 was explicitly **excluded from the** record.



Rules Up For Final Action

Proposed Amendment to
WAC 230-30-070 Control of prizes – Restrictions – Bonus prizes –
Displaying – Procedures for awarding.
WAC 230-12-050 Extension of credit, loans, or gifts prohibited – Limited
exception.

ITEM 8 (a) on the September 15, 2006, Commission Meeting Agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
ZDI Gaming Inc., a licensed distributor and manufacturer.	
Proposed Change	
<p>The petitioner is requesting WAC 230-30-070 be amended to allow prizes from punchboard or pull-tab games be paid in the form of a gift certificate or on a gift card if the prize is \$20 or less. Most prizes are below \$20. The petitioner is also requesting that WAC 230-12-050 be amended so that participants may use a gift certificate or gift card as consideration to participate in a gambling activity.</p> <p>Attached: Petition for Rule Change Letter dated August 15, 2006, from Ms. Mell, attorney for ZDI Gaming, withdrawing the Petition.</p>	
History of Rule	
<p>Punch board or pull-tab prizes must be awarded in cash or merchandise only. (WAC 230-30-070). Only cash, checks, or electronic point-of-sale bank transfers can be used to participate in gambling activities. (WAC 230-12-050)</p> <p>ZDI filed a Declaratory Order for a Pull Tab dispensing device (Video Interactive Play (VIP)) that would allow a cash card to be used to purchase pull-tabs and to receive prizes of \$20 or less. The Administrative Law Judge (ALJ) issued a Declaratory Order on May 1, 2006, and found that the VIP device was not a gambling device as defined under RCW 9.46.0241(1) because the device did not meet the three elements of gambling. However, the ALJ found the VIP device was in violation of WAC 230-12-050 because the device allows a cash card to be used for the consideration and the prize, and the cash card does not meet the definition of cash as defined in either the Black's Law Dictionary or the American Edition of the Oxford Dictionary. The ALJ found the VIP device would not be authorized under WAC 230-12-050 and WAC 230-30-070. After we received ZDI Gaming's Petition for Rule Change, ZDI appealed the ALJ's decision.</p>	
Impact of the Proposed Change	
<p>Staff opposes the petition for the following reasons:</p> <ol style="list-style-type: none"> 1) Approving the petitioner's request would open the door to proposals that combine gift cards and pull-tab dispensing devices. These proposals would look similar to slot machines and share some of the same features. 2) The petition does not contain a dollar limit on gift cards, which could facilitate money laundering (see attached news article on yellow paper). 3) Players are more likely to spend additional money gambling at a licensee's business when a gift card is issued, compared to if cash was given as a prize. 	

Regulatory Concerns
<p>This proposal would allow patrons to participate in a gambling activity without any interaction with employees of the establishment who would be able to determine if the patron is intoxicated or under age.</p> <p>This could ultimately allow gambling devices that are not currently allowed.</p>
Resource Impacts
<p>Approving the petitioner's request would likely lead to proposals to combine pull-tab dispensing devices and gift cards. These new devices would require the Commission's review under WAC 230-30-097. It would require review by our electronic gambling lab and changes in regulatory processes for our Field Operations Division.</p>
Policy Considerations
<p>This could be considered an expansion of gambling.</p> <p>The rule change would likely lead to future requests for devices that would look very similar to slot machines and only require interaction with an employee if the prize exceeds \$20.</p>
Stakeholder Statements Supporting the Proposed Rule Change
None.
Stakeholder Statements Opposing the Proposed Rule Change
None.
Licensees Directly Impacted By the Change
Licensed manufacturers, distributors, and pull-tab operators.
Staff Recommendation
Deny the Petition.



Rule Up For Final Action

Proposed Amendment to
WAC 230-02-412
Gambling equipment defined.

ITEM 9 (a) on the September 15, 2006, Commission Meeting Agenda. Statutory Authority 9.46.070 & 9.46.0282

Who proposed the rule change?

Don Logerwell.

Proposed Change

The Petitioner requests the following changes:

1. Clarify that only logo cards and logo chips used in a currently licensed or class III facility be defined as gambling equipment.
2. Exclude logo chips from the definition of gambling equipment if they are sold to players for use in a gambling activity and the player removes the chips from the licensed premises, or if the chips are replaced by new chips with a different color, logo, or artwork.
3. Exclude logo cards from the definition of gambling equipment if they are defaced (for example, a hole drilled through the deck or the corners clipped).

Attachments:

Petition for Rule Change

Letters from Mr. Logerwell dated April 24, 2006, May 18, 2006, June 25, 2006, and

August 31, 2006 (added after the June Commission meeting – yellow paper).

History of Rule

Prior to 2000, the definition of gambling equipment was located in licensing rules for manufacturers and distributors. This rule was created in 2000 and combined the definitions of gambling equipment into one rule. This new definition was adopted as part of a rules package to clarify that only licensees could legally possess gambling equipment. The intent of this rule is to control equipment used in licensed gambling activities and ensure it is not used in illegal activities, or in a way that could defraud the public.

House-banked and Class F card rooms are required to use logo cards and logo chips. If the card room closes or changes its logo, their logo cards/chips must be sold to a licensed manufacturer or distributor (WAC 230-12-335(2)(b) copy attached on tan paper). An alternative to selling logo cards/chips back to a manufacturer or distributor is to destroy the logo cards/chips. Card rooms must have written procedures in their internal controls for destroying logo chips/cards. These internal controls are approved by staff.

Logo Cards: Because cards are handled so much by players and dealers during games, the decks soon show wear and are removed from play. As soon as cards are removed from play, they are "defaced or cancelled" (a black line drawn on the cards). Licensed security personnel are then responsible for the destruction of the cards. Common destruction methods include drilling a hole through the deck or shaving off the corners of the deck. Once the cards are destroyed, they are no longer considered gambling equipment and are often donated to senior centers or given away.

Logo Chips: Card rooms rarely change out their logo chips. When logo chips show wear or are accidentally broken, licensees usually destroy them by breaking them into pieces with a hammer. Card rooms must maintain a chip destruction log in which they include the method of destruction.

The increased popularity of poker has made logo cards/chips popular collector items. Staff received

past year, staff has researched the possibility of removing logo cards/chips which are no longer in use, because a licensee changes its logo or closes its business, from the definition of gambling equipment.

Impact of the Proposed Change

A logo chip is still gambling equipment, even if a card room closes or changes its logo. Regulatory and policy implications may preclude removing logo chips and cards from the definition of gambling equipment. By keeping logo chips and cards in the definition of gambling equipment, the Commission retains regulatory jurisdiction to determine whether individuals are illegally possessing or using gambling equipment.

Regulatory Concerns

- 1) Pursuant to RCW 9.46, the Commission must provide strict regulation and control over gambling in the State. Logo cards and chips are vital components of card games and oversight is needed to ensure that strict regulation.
- 2) The Commission has a long standing practice, since 1975, to regulate gambling chips.
- 3) Gambling chips are a negotiable instrument and there is a potential for fraud, theft or counterfeiting if they are not closely controlled.
- 4) Removing certain **logo** chips from the Commission's control may create regulatory problems. Currently, the rule is clear that logo chips must only be in the possession of a licensee. Accordingly, if someone is selling logo chips, agents do not have to check to see if the chips are lawful to sell or not. If the petition is adopted, agents would need to create a method to identify if chips have been discontinued or are from a card room that has closed.

Rules from New Jersey and Nevada relating to chip destruction (green paper).

New Jersey has rules requiring licensees to notify the Gaming Commission, in writing, of the date and location of where logo chips will be destroyed, the denomination, number and amount of value of the chips to be destroyed. They must also describe how they will destroy the chips. The destruction must be carried out in front of two licensed casino employees. All chip destruction information must be recorded and maintained by licensees.

Nevada approves gaming chips and has kept a sample of each chip it reviews since the 1970's. If a licensed gaming establishment is going to sell or close, the gaming chips must go through a redemption process to make an effort to cash-in the chips. After the redemption process has concluded, the licensee must obtain permission from the Gaming Board for the destruction of the chips "or such other disposition of the discontinued chips and tokens as the chairman may approve or require" (See Nevada regulation 12.070(2)(d)).

Prior to the June Commission meeting, the Washington State Gambling Commission's Rules Coordinator (agency Rules Coordinator) spoke with a Nevada enforcement agent who said the normal process was for the chips to be destroyed. There has not been an situation where chips were not required to be destroyed under Nevada Regulation 12.070(2)(d). The Nevada Enforcement Agent said the normal process for destroying chips is by shredding. The chips cannot be buried, burned, put into cement or acrylic or similar materials. It is unlawful for a licensee to sell or retain chips after the location is no longer in operation. If some chips are still in circulation because players walked out of the casino with a few in their pockets, Nevada is not concerned when they are retained as a souvenir. However, if that person redeems, or tries to redeem, a chip, they may be committing a felony in Nevada, depending on their knowledge of the gaming chip and their intent. If someone tries to redeem a chip that was reported as destroyed, they may be in violation of Nevada law if they retain the chips or attempt to sell or redeem them. Nevada's biggest concern is with fraud and the ability for counterfeit chips to be copied from existing chips.

Update after the June 2006, Commission Meeting:

At the June meeting, the petitioner testified that staff had the wrong Nevada regulations and that Nevada regulation **12.070(2)(d)** does not require all discontinued chips to be destroyed because of the following language "*or such other disposition of the discontinued chips and tokens as the chairman may approve or require.*" The agency's Rules Coordinator spoke with a Nevada enforcement agent after the June Commission meeting and the agent clarified that though this regulation has language that the chairman may approve alternative ways to dispose of chips, this has never happened.

The petitioner told the agency Rules Coordinator that he was working with the Nevada Gaming Chairman to obtain chips from a Nevada casino that will be closing later this year. Attached is a letter from the Nevada Gaming Control Board denying the request (blue paper).

Resource Impacts

As mentioned above, logo chips have become popular collector items. Staff considers the facts and circumstances of each situation that arises involving logo chips that are not in the possession of a licensee. At times, players take a chip from a card room as a souvenir for sentimental reasons and there is no intent to defraud the public or a licensee. If someone attempts to redeem chips that are from a card room that has closed, criminal intent is involved and we would investigate. Only licensed manufacturers and distributors are authorized to sell logo chips and cards.

Policy Consideration

- 1) The industry enforcement standard is to closely control gambling chips.**
- 2) Staff has found no other jurisdiction that allows gambling chips to be purchased or sold by unlicensed persons.**
- 3) Adopting this petition would make Washington the only state that allows possession of non-cancelled gambling chips.**
- 4) Staff finds no regulatory reason to deviate from the industry standard.**

Stakeholder Statements Supporting the Proposed Rule Change

Letter from the Recreational Gaming Assoc. dated July 6, 2006 (added after the 7-06 meeting)

Michels Development, house-banked card room licensee, letter dated June 16, 2006.

Chipco International, licensed chip manufacturer, letter dated June 13, 2006.

Iron Horse Casino, house-banked card room licensee, letter dated June 1, 2006.

Stakeholder Statements Opposing the Proposed Rule Change

E-mail from Nicholas Bates, chip collector, dated June 6, 2006 (added after the 7-06 meeting)

Letter from Nicholas Bates, chip collector, dated February 3, 2006.

Letter from Herman Kiplinger, chip collector, dated February 2, 2006.

Letter from Helen Healy, chip collector, dated February 4, 2006.

Letter from Jay Lakin, chip collector, dated February 10, 2006.

Letter from Michael Jackness, chip collector, dated February 10, 2006.

Letter from Michele Yeh, chip collector, dated February 10, 2006.

Letter from J. McKenzie, chip collector, dated February 13, 2006.

Licensees Directly Impacted By the Change

House-banked card rooms, manufacturers, and distributors.

Staff Recommendation

Deny the petition.

Proposed effective date for rule change.

The petitioner has not proposed an effective date.



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL
OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)

The Office of Financial Management (OFM) has adopted this form for members of the public who wish to petition a state agency to adopt, amend, or repeal an administrative rule (regulation). Full consideration will be given to a petitioner's request.

To obtain this form in an alternate format, call OFM at (360) 902-0555 or TTY (360) 664-9437.

Please complete the following:

PETITIONER'S NAME (PLEASE PRINT) DONALD L. LOGERWELL		TELEPHONE NUMBER (INCLUDE AREA CODE) (206) 283-2465	
STREET ADDRESS 2832 43RD AVE. NW.	PO BOX NUMBER	CITY SEATTLE	STATE WA
		ZIP CODE 98199	
AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE, IF KNOWN GAMBLING COMMISSION		If unknown, call (360) 753-7470 for mailing information	

Please submit completed and signed form to the "Rules Coordinator" at the appropriate state agency. The agency will contact you within 60 days.

Check all that apply below and explain on the back of this form with examples. Whenever possible, attach suggested language. You may attach other pages, if needed.

☐ 1. NEW: I am requesting that a new WAC be developed

I believe a new rule should be developed.

- ☐ The subject of this rule is:
- ☐ The rule will affect the following people:
- ☐ The need for the rule is

☒ 2. AMEND: I am requesting a change to existing WAC 230-02-412

☐ 3. REPEAL: I am requesting existing WAC _____ be removed.

I believe this rule should be changed or repealed because (check one or more):

- ☐ It does not do what it was intended to do.
- ☒ It imposes unreasonable costs.
- ☐ It is applied differently to public and private parties.
- ☐ It is not clear.
- ☒ It is no longer needed.
- ☐ It is not authorized. The agency has no authority to make this rule.
- ☐ It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known
- ☐ It duplicates another federal, state, or local law or rule. Please list number of the duplicate law or rule, if known
- ☒ Other (please explain):

RECEIVED
APR 26 2006
GAMBLING COMMISSION
COMM & LEGAL DEPT

PETITIONER'S SIGNATURE Donald L. Logerwell	DATE
--	------

Donald L. Logerwell
Attorney at Law

2832 43rd Ave. W.
Seattle WA 98199-2424
dlogerwell@comcast.net

Phone: 206-283-2465

RECEIVED

APR 26 2006

**GAMBLING COMMISSION
COMM & LEGAL DEPT**

Fax: 206-352-9446

April 24, 2006

Ms. Susan Arland
Rules Coordinator
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

Re: Petition to Amend WAC 230-02-412

Dear Ms. Arland:

I respectfully request that the Gambling Commission amend WAC 230-02-412. The current rule with the amendment requested is attached as Exhibit "A" hereto. This rule has been the subject of review by the staff as part of the Rules Simplification Project for the past year. Staff had recently recommended amendment of this rule as requested in this petition. I am unclear as to the reason for delay to date but submit that this rule should be amended now without further delay.

Introduction: This petition seeks to limit the extent to which chips and playing cards are defined as gambling equipment and therefore subject to commission regulation and potential criminal prosecution for use or misuse.

Preliminarily, it is important to remember that gaming chips and playing cards are sold in many, many retail outlets in Washington including such diverse establishments as **Bartell** Drugs, Costco and Macy's to name but a few. The market for chips, in particular, has literally exploded in the last few years with the popularity of poker arising out of television coverage and internet gambling sites. Most of the chips that are now being sold (for home game use) are manufactured outside of the United States.

Background: As currently drafted, the rule covers all "gaming chips and cards" which were used to "conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities". As such, WAC 230-12-335 precludes licensees from selling gambling equipment

Ms. Susan Arland

April 24, 2006

Page 2 of 4

including gaming chips and cards except to other licensees, manufacturers or distributors' and under strictly specified conditions.

The practical effect of the current rule, if enforced, is that licensees who cease operation or issue new chips or cards with a change in logo or artwork would be precluded from selling their unusable chips and cards. That is, no other licensee could use logo chips or cards other than their own.

In addition, the rule is, for all practical purposes, unenforceable because it would literally prohibit patrons of licensees from buying chips, removing them from the premises and selling them to others. This aspect of the current rule is what stimulated this petition because, as will follow, casino chip collectors have been warned that their acquisition, purchase and sale of chips for their collections could be subject to commission enforcement activity. Casino chips collectors and casino chip sales² number in the tens of thousands. The Casino Chip and Gaming Token Collectors Club, of which I am a member, is devoted to the hobby with members from around the world.

To be more specific regarding enforcement issues, an investigator from the commission's Tacoma office recently contacted an eBay seller and warned that person that sales of casino chips from Washington state could be construed to violate the subject rule with attendant consequences. A common way for chip collectors to expand their collections is to "harvest" chips from their local casinos and card rooms and trade (or sell) chips with other collectors who do the same around the country. Even customers who are not collectors frequently put a chip or two in their pocket as a souvenir and these chips often appear, sometimes years after, in estate or auction sales along with all kinds of other memorabilia. Strictly construed, the current rule would make all such activity a violation.

The current rule also operates to the detriment of Washington state licensees. A licensee who goes out of business, or replaces chips (or cards) with a new issue, has no way to dispose of the old chips and cards without running afoul of the commission's rule as currently drafted. It is doubly unfortunate for those licensees who end up going out of business. They have made a significant investment in cards and chips which they ought to be able to recoup, in part, by selling their inventory to collectors and dealers.

Collectors would also be losers if the current rule were, or could be, enforced. Chip collectors, like those who collect coins or stamps, see casino chips as unique and, to some degree, as objects of art which ought not be secreted away or destroyed for no apparent reason.

Other Issues

Some concerns have been raised about allowing obsolete chips and cards to be sold to the public. Those include issues of redemption and security. Redemption issues are handled by the

¹ Chips and cards which bear the logo of the original licensee are, of course, of no use or value to other licensees, distributors or manufacturers.

² As of the date of this letter, eBay has over 16,000 listings of collectible casino chips for sale! Of those, more than one hundred are listings for the sale of casino chips from establishments in Washington state, current and obsolete.

Ms. Susan Arland

April 24, 2006

Page 3 of 4

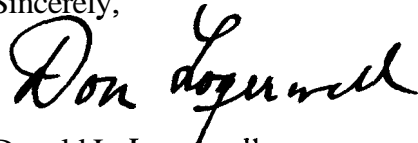
licensees who generally post notice when chips are being replaced with new chips. And, of course, there is no issue of redemption for casinos or card rooms that are closed and out of business.

Some have expressed a concern about security, i.e. the chance that chips from one licensee could somehow be modified and then used or cashed elsewhere. Security in the modern age is not a problem. The two major U.S. casino chip makers, Chipco and IGT³, have extremely sophisticated methods⁴ of insuring that casino chips from one property cannot be altered and used elsewhere. Indeed, their ability to insure security is a significant factor in their successful efforts to secure approval from the state of Washington and other jurisdictions to manufacture and sell casino chips for use by licensees.

Revisions to this rule have been under consideration by the staff of the commission for over a year now. During the course of those reviews, as part of the rules simplification program, some collectors have objected to revising the rule along the lines proposed in this petition because, they contend, doing so would devalue their collections. Most collectors of casino chips, including the author, want more, not less, access to collectibles and view this issue in a less self-serving manner. But, protecting the value of some individual collections is not, and should not be, a concern for the gambling commission—such concerns have nothing to do with the stated mission of the commission, i.e. to "protect the public by ensuring that gambling is legal and honest."

Conclusion: I urge the commission to move forward to amend WAC 230-02-412 without further delay. I stand ready to provide whatever other information I can, in person or otherwise, and look forward to a favorable response to this petition.

Sincerely,

A handwritten signature in black ink that reads "Don Logerwell". The signature is written in a cursive, flowing style.

Donald L. Logerwell

³ IGT and Chipco are the only manufacturers licensed by the state of Washington.

⁴ Chips have distinct colors, mold patterns, edge spots, inserts and, in some instances, ultraviolet markings which can be seen only under a black light.

Exhibit "A"

Proposed amendment to WAC 230-02-412. New language underscored.

WAC 230-02-412
Gambling equipment defined.

For purposes of this title, gambling equipment means any device, gambling related **software**, expendable supply or any other paraphernalia used in conjunction with or to facilitate gambling. Gambling equipment includes, but is not limited to:

(7) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class **III** gaming activities, **as** defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts, including, but not limited to:

(a) Gaming chips with a house name or **logo** for use in a currently licensed, or Class **III** gaming facility. However, chips will not be considered **gambling** equipment if they are discontinued and replaced **by** new chips with a different color, logo, or artwork;

(b) Cards with a house name or **logo** for use in a currently licensed, or Class **III** gaming facility. However, cards defaced **by** a card room operator are not considered **gambling equipment**. For purposes of this rule, "defaced" means permanently altered so the cards are easily identifiable **as** different from other cards in play. For example, cards can be defaced by drilling a hole through the deck, clipping the **corner(s)** or sides of a deck;

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May 18, 2006

Ms. Susan Arland
Rules Coordinator
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

Re: Petition to Amend WAC 230-02-412

Dear Ms. Arland:

Thank you for taking the time to speak with me again regarding the status of the petition I filed with the Commission on April 24, 2006. As you know I was surprised to read the "Rules Under Review" section of the commission website indicating that the staff apparently does not support the rule change I proposed in my petition. What I proposed is precisely what the staff had previously suggested and the language I used was written by the staff after several months of review and consideration of this issue. I expected that the rule would be revised as the staff had previously recommended and only filed the petition because I understood that the revision to this rule was being delayed by other pending rule revisions.

I will comment on some specific concerns subsequently but, before I do, I want to address a larger issue—respect for the law. The current rule is, as will follow, both unenforced and unenforceable. **Rules, regulations and laws that are not enforced and cannot, as a practical matter, be enforced create disrespect for the law and for our legal system.** The commission is an integral part of that legal system and should be concerned that what it does generates respect, not disdain, for its rules, for the law and for our legal system.

As currently written, the rule is unenforceable. On its face, it applies to all "gaming chips" and "cards" that can be used for "card games, fund-raising events, recreational gaming activities . . ." without regard to the location of the event or the identity of the players or host. So, when Bartell Drug and Costco sell "gaming chips" and "cards" for use in Uncle Charlie's neighborhood poker game, those retailers are in violation and subject to the criminal provisions of RCW 9.46.160 and subject to "forfeiture of the corporate charter".

Similarly, as I pointed out in my petition, there are hundreds of Washington state casino and card room chips being sold daily on eBay, some from currently licensed and operating facilities,

others from casinos and card rooms that have long since closed. As written, the rule could be construed to make all of these individual sellers susceptible to some kind of legal action albeit outside the jurisdiction of the commission..

You mentioned that someone on the staff raised the issue of chips from Freddie's Club, Auburn (closed some time after the death of Fred Steiner and now the Iron Horse) being taken to Freddie's Club in Fife. I have attached to this letter color scans of the \$1 and \$5 chips¹ from both of those locations. They are all, as one can readily see, completely and visibly different and purposely so. Freddie's Club management² and their chip suppliers made sure that the chips for the different locations were unique, consistent with the overall security precautions that exist in the industry. The idea that chips from Auburn could be cashed in Fife is, I suspect, based solely on someone's suspicion but not, as you can see, based upon either fact or realistic possibility. If, in fact, this has happened I'd be most interested, as would I dare say the commissioners, in the details.

You also said that there were concerns that revising the rule as I've proposed would lead to risk of counterfeiting. I am at a total loss to understand that concern. You say that someone suggested that chips from a closed facility could somehow be modified and cashed at another but such a hypothesis is totally fanciful—you need only check with the two Washington licensed chip manufacturers, Chipco and GPIC, to understand how they use colors, inserts, molds and other unique elements of design and manufacturing to prevent counterfeiting. And, as with the Freddie's Club hypothesis, I'd also like to know if there have been any such documented instances of counterfeit Washington casino chips from a closed licensee being redeemed or played at one that is open for business.

As you know, I filed this petition on behalf of chip collectors like myself and on behalf of a client who is looking to purchase and resell obsolete chips from Washington licensees. We see the destruction of obsolete chips as a waste and for no legitimate regulatory purpose.

¹ To determine what kinds of chips these two clubs had I referred to the standard collector's guide, *The Casino Chips of Washington State, 2nd Edition* (Pheasant Ridge Publishing, Moscow, ID 2003). Freddie's in Fife uses the two Chipco \$1 and \$5 shown in the attachment. The Auburn club also had a Chipco \$1 and a Chipco \$5 as shown which are quite obviously different.

² To my understanding, the Freddie's Clubs in Renton, Auburn and Fife were owned and operated by different partnership groups with the late Fred Steiner as the common member. It is, therefore, understandable that they would insist on different chips at each facility. The Auburn partners would not have wanted chips from Fife or Renton presented at their facility and vice versa.

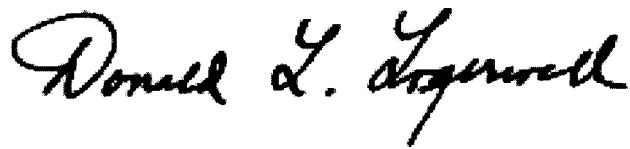
Ms. Susan Arland
May 25, 2006
Page 3 of 3

I look forward to receiving the final recommendation of the staff which will be presented to the commissioners. Though I hope that their views will coincide with mine and recommend granting this petition, should they adhere to this recent change and recommend against it, I stand ready to attend the June 16 meeting in Walla Walla to address the commission when this petition is considered.

In closing, I want to emphasize that the stated goal of the Washington State Gambling Commission is to insure that gambling is "legal and honest." Restrictions on the sale and distribution of obsolete logo chips serve no regulatory purpose and distract from that goal wasting valuable time and staff³ resources that could be better used elsewhere.

I thank you for your assistance and cooperation as I pursue this issue.

Sincerely,

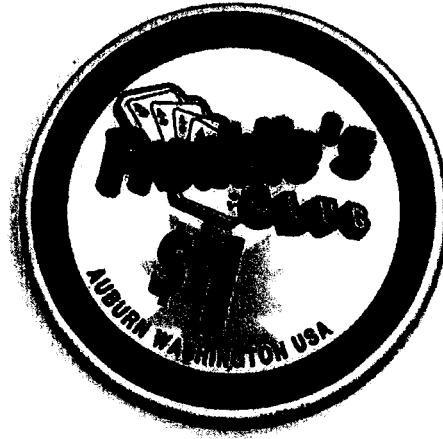
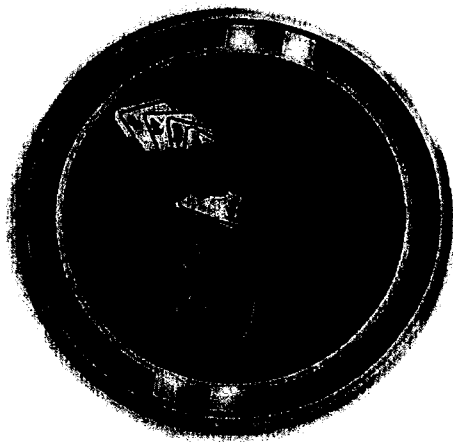
A handwritten signature in black ink that reads "Donald L. Logerwell". The signature is written in a cursive, flowing style with a large, stylized 'D' and 'L'.

Donald L. Logerwell

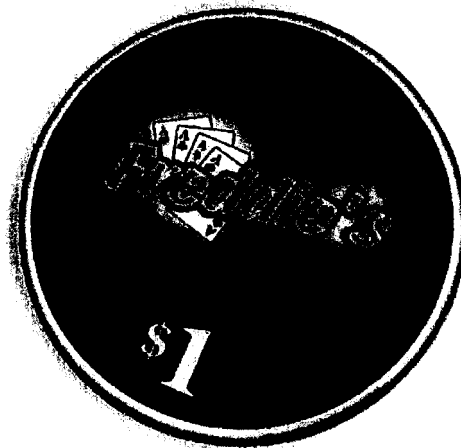
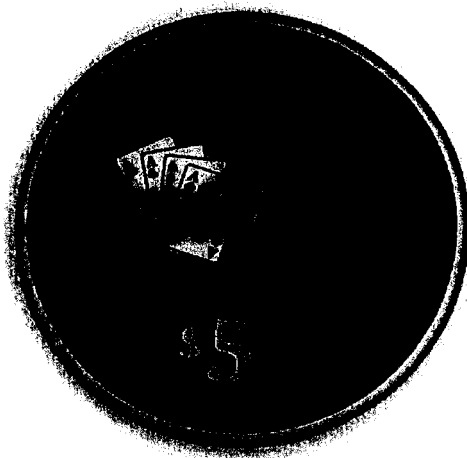
³ Indeed, this whole matter came to my attention when one of the field investigators contacted another member of the chip collecting community who was selling obsolete Washington chips on eBay. When I spoke with him I was told he had neither the time nor the inclination to pursue harmless activity like this.

Freddie's Club \$1 and \$5 Chips

Auburn



Fife



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Phone: 206-283-2465

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June 25, 2006

Ms. Susan Arland
Rules Coordinator
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

Re: Petition to Amend WAC 230-02-412

Dear Ms. Arland:

Now that the Commission has set my petition for further rule making, I have some additional comments based upon what transpired at the meeting in Walla Walla. I am sending this to you now so that a copy can be included in the packet for the July meeting in Vancouver. I will attend and address the Commission in more detail on these points at that time.

As I understand it, the staff opposition to my petition is based upon two possible, though unproven, issues. The first of these is that obsolete chips from a closed card room might somehow be used or redeemed at another card room that remained in operation. The second is that allowing obsolete chips from a closed card room to be sold would somehow create a danger of counterfeiting. In my view, both of these concerns are fanciful at best since there is absolutely no evidence that either has ever happened despite the fact that there are literally billions' of obsolete casino chips in existence from casinos and card rooms across the state and around the country and the world.

¹ I know that this phrase "billions of obsolete casino chips" may seem exaggerated but it is accurate. The average card room in Washington has between 30,000 and 40,000 chips in stock. At last count there were nearly 100 of those currently in operation so there are between 3 and 4 million chips currently in use in Washington alone! Large, full service casinos will have ten to twenty times that number, a half million or more at each property. Considering the number of casinos and card rooms in Nevada, New Jersey, the Mississippi Gulf Coast and the large Indian and non-Indian casinos and card rooms that operate in nearly every other state, it becomes clear that there are countless numbers of obsolete casino chips available on the market. The point is that allowing those few chips which become obsolete each year in Washington to be sold would be a veritable drop in the ocean of chips otherwise available.

I. Fraudulent Use or Redemption of Obsolete Chips: Absent some further explanation from the staff about this issue, I can only speculate as to what the issue might be. Surely no one believes that chips from, say, New Sonny's Federal Way, could successfully be used or redeemed at some other card room given that the name "New Sonny's" and the location "Federal Way" are prominently displayed on all of these obsolete chips.

I did hear some concern about obsolete chips from Freddie's Club and the Silver Dollar and how those might be used or redeemed at other locations with the same name. I previously researched the Freddie's Club issue as it was described to me (Auburn now closed and Fife still open) and provided you with color scans to show that the chips were, save for the name, completely different. I noted, however, that my letter with the color scans was included in the packet for the Commissioners in black and white which did not clearly show the differences. I'll illustrate those further at the meeting in Vancouver. In addition, there was also some mention of Freddie's Club, Everett—I'll show scans of those chips to show that they, too, are completely different.

As regards the Silver Dollar which currently has seven card rooms in operation in western Washington. I'm researching those and will present that information as well but I can tell you that what I've found so far confirms what I would have thought—all of the Silver Dollar chips are different, location by location, in significant ways that would make their use or redemption at another virtually impossible without the consent of their common management/ownership.

And, it is important to note that the Commission does not need a rule to prevent something that not only doesn't happen but would already, in and of itself, be criminal activity if it did. That is, fraudulent use or redemption of obsolete chips is fraud and theft and already covered by the Washington criminal code.

Finally, you will note that several licensees and the Recreational Gaming Association have written in support of my petition. It is the licensees who would be at risk of fraudulent use or redemption. If, as has been suggested, chips from one Freddie's Club or Silver Dollar might be cashed at another it is the management of those organizations who would be apprehensive about my petition. Instead, they support my petition because they are not concerned about fraudulent use. The Commission should follow the lead of the industry on this issue.

II. Counterfeiting

This issue arises from a sentence in the staff report in opposition to my petition. "Nevada's biggest concern is with fraud and the ability for counterfeit chips to be copied from existing chips." Though the source of this statement is unidentified and though it may well be true, counterfeiting has absolutely nothing whatever to do with the issue now before the Commission in my petition, i.e. sales of obsolete casino chips from closed card rooms.

Counterfeiting, as the staff report states, is copying of existing chips by making new, fake chips that resemble the real ones. Casino chips, in this respect, are like money—they have a stated

Ms. Susan Arland

June 25, 2006

Page 3 of 3

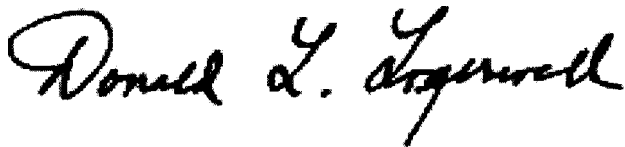
value far in excess (for higher denominations) of their raw material and the chip manufacturers go to great length to insure against counterfeiting. The Commission already has a letter from one such manufacturer, Chipco, which supports my petition and explains their security measures. To quote from their website:

"The most secure chip in the industry, CHIPCO ProTech™ Series products have never been successfully counterfeited." www.chipco.com

As a chip collector, I can tell you that our hobby is also concerned about counterfeiting since there are some obsolete chips which are much, much more valuable than any chips currently in use except for a very few used in the highest end Nevada casinos. We've had rare obsolete chips sell for in excess of \$10,000 each. We've never, to my knowledge, seen such chips successfully counterfeited though there is ample incentive to do so.

I did hear a suggestion that someone might take an obsolete chip and somehow modify it to mimic a chip in use at another facility. This is pure fantasy—I will take a few minutes at the meeting in Vancouver to explain how chips are made, the security that is built into each issue to show that any notion that an obsolete chip could somehow be successfully modified to make a copy of an existing chip is simply impossible.

Sincerely,

A handwritten signature in black ink, reading "Donald L. Logerwell". The signature is written in a cursive, flowing style with a large, prominent 'D' and 'L'.

Donald L. Logerwell

Donald L. Logerwell
Attorney at Law

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August 31, 2006

Ms. Susan Arland
Rules Coordinator
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

Re: Petition to Amend WAC 230-02-412

Dear Ms. Arland:

I have today received a copy of the memo which the staff will provide to the Commissioners. This is, by my count, the third time that staff have changed their position on this issue. Initially, the Rules Team supported my request for a rule change, then it was opposed, then it was viewed with favor and now it is, again, opposed.

From April, 2005 (when I first began working with the Rules Team) until April, 2006 (when I filed this petition), staff was supportive of my idea, the Rules Team was working with me and it was the Rules Team that drafted the revisions to the rule which I now propose.

- In May, 2006, after I filed this petition, staff changed their view and urged the Commissioners to deny the petition.
- In June, 2006, after the Commissioners accepted the petition for filing, you called to advise that staff was now in favor of allowing obsolete chips to be sold to non-licensees but might want to amend a different rule to accomplish the same result. I was told that the issue would be finally resolved at a meeting on July 17, 2006 and that my petition would not be discussed at the July meeting of the Commission in Vancouver. For that reason I did not attend the July meeting.
- I heard nothing further over the next six weeks. When I inquired of you last week, I was told that the staff was meeting this week to decide and document their position. I received that document today.

I will attend the Commission meeting in Spokane on September 14 & 15, 2006. At that time I will explain, in detail, why the rule should be amended and why the stated concerns of the staff in the latest memo are misplaced and unsupported. Before that meeting, however, I want to alert the Commissioners to the principal defects in the staffs analysis.

I. Washington would be the only state with such a rule: I address this point first because it is the newest, and most misleading, of the staff's objections. Staff opines that "no other state" has such a rule and that such a rule would be contrary to some supposed "industry standard." The implication is that other states, and therefore the industry standard, prohibit obsolete chips from being bought and sold except by licensees. But, staff cites no rule from any state to that effect. The best that staff can do on this point is to say that it has "found no other jurisdiction" that allows such'. But, equally, staff has not found any other jurisdiction that has a rule that prohibits it. The fact is that the rules in most states are silent on the issue—that, if anything, is the "industry standard", no rule, one way or the other.

II. Fraudulent redemption and counterfeiting: I have discussed these two non-problems in an earlier letter and will not repeat those comments here. Suffice it to say that all the staff has on these issues is unfounded suspicion—there has never been, to my knowledge and I've asked around, a single instance where an obsolete chip from one closed casino or card room was redeemed at an unrelated card room. The same statement is true for counterfeiting—to my knowledge, and no one has produced evidence to the contrary, there has never been an occasion where an obsolete chip was successfully used to counterfeit another. There is absolutely no evidence that either has ever happened despite the fact that there are untold numbers of obsolete and fantasy, home game chips, Washington and other, in the hands of players and collectors. I will demonstrate at the meeting why these oft-expressed concerns are, at best, fanciful.

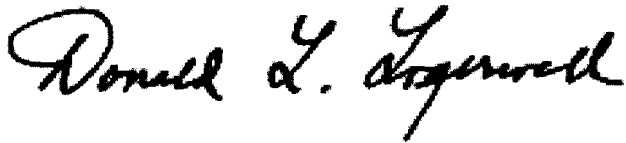
III. Changing the rule would make enforcement difficult: Staff suggests that amending the rule would make it difficult for agents because "if someone is selling logo chips, agents (would have) to check to see if the chips are lawful to sell or not." That implies that agents are currently monitoring chip sales and taking steps to insure that such sales are lawful. Under the existing rule, all sales of gaming chips are unlawful except between licensees. To my knowledge, **absolutely nothing is being done by agents or anyone else at the Commission to monitor chip sales and enforce the current rule.** I will demonstrate to the Commission that the rule does nothing to stop licensees who cease operation from selling their chips because they are doing so and in large numbers every day. The only people who are not selling their chips are existing licensees who have acquired card rooms and changed the name. I do not speak for them but can surmise that they are being cautious and not selling the obsolete chips because they are still subject to the Commission's regulatory jurisdiction.

¹ I note that staff has obtained a copy of a letter to me from Chairman Neilander of the Nevada Gaming Control Board denying my request that my client be permitted to purchase chips from the soon-to-close Stardust Hotel. That issue is still being pursued and is far from finally resolved. I would, therefore, only comment to this extent—the Nevada enforcement people object to this request on the basis that chips are not "currency." What that has to do with collectors buying, selling and trading obsolete casino chips is completely lost on me.

Ms. Susan Arland
August 31, 2006
Page 3 of 3

The Commissioners and the staff deal with important issues which directly affect the core goals of insuring the legality and honesty of gambling in Washington. Maintaining a rule which is routinely disregarded and serves no useful regulatory purpose is a waste of valuable and limited resources that should be directed to those core issues.

Sincerely,

A handwritten signature in black ink, reading "Donald L. Logerwell". The signature is written in a cursive style with a large, stylized "D" and "L".

Donald L. Logerwell

WAC 230-12-335 Control of gambling equipment — Sales and purchases by and to licensees only — Authorized transfers of gambling equipment.

It shall be the responsibility of all licensees to ensure that gambling equipment is closely controlled and possessed only by authorized persons. Gambling equipment possessed by unauthorized persons is subject to seizure and forfeiture. It shall be the responsibility of all licensees to report all unauthorized possession of such equipment to the commission. The following restrictions and exceptions apply to the transfer of gambling equipment:

Restrictions.

(1) Prior to selling gambling equipment to or purchasing such from any person, a licensee shall ensure that the person receiving or selling the equipment possesses a valid gambling license: Provided, That Class F and house-banked card room applicants may possess gambling equipment during the precicensing process after receiving written approval from commission staff.

Authorized transfers of gambling equipment.

(2) In addition to normal business transactions between manufacturers, distributors and operators, the following transfers of gambling equipment are authorized:

(a) Gambling equipment may be transferred as a part of a sale of a business when such sale is contingent on the buyer receiving a gambling license prior to the completion of the transaction. A complete record shall be made of all gambling equipment transferred in this manner, including commission identification and inspection services stamp numbers. Such transfers, including a copy of the inventory record, shall be reported to the commission.

(b) Licensed operators or distributor: whose license has been revoked, expired, or voluntarily surrendered may sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor. Transfers of gambling equipment in this manner are subject to the following requirements:

- (i) Such transfer shall be completed within thirty days of the date the license became invalid;
- (ii) The transaction is for cash or credit against amounts owed a manufacturer by a distributor;
- (iii) A complete inventory of all gambling equipment transferred in this manner, including commission identification and inspection services stamp numbers, shall be reported to the commission within ten days of the transaction by the operator or distributor selling the equipment; and
- (iv) The licensed manufacturer or distributor receiving the equipment shall prepare a credit memorandum as required by WAC 230-08-025(2). A copy of the inventory record and notice of sale reported to the commission shall be attached and maintained as a part of this record.

(c) A bona fide charitable or nonprofit organization may sell or otherwise transfer gambling equipment used for fund-raising events to another charitable or nonprofit organization authorized to possess such equipment. Such transfers shall be limited as set forth in WAC 230-25-110. A complete inventory of all gambling equipment transferred in this manner shall be reported to the commission within ten days of the transaction by the charitable or nonprofit organization selling or transferring the equipment.



KENNY C. GUINN
Governor

STATE OF NEVADA

GAMING CONTROL BOARD

1919 College Parkway, P.O. Box 8003, Carson City, Nevada 89702
555 E. Washington Avenue, Suite 2600, Las Vegas, Nevada 89101
3650 S. Pointe Circle, Suite 203, P.O. Box 31109, Laughlin, Nevada 89028
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MARK A. CLAYTON, *Member*

July 11, 2006

Carson City
(775) 684-7742
Fax: (775) 687-8221

Mr. Donald L. Logerwell
Attorney at Law
2832 43rd Avenue West
Seattle, Washington 98199-2424

RE: CORRESPONDENCE #2006-0388
STARDUST CASINO CHIPS

Dear Mr. Logerwell:

The Gaming Control Board has reviewed your correspondence dated June 21, 2006, regarding your request to purchase Stardust Hotel and Casino gaming chips.

Nevada Gaming Commission Regulation 12.070(1), Redemption and disposal of discontinued chips and tokens **states**

"A ~~licensee~~ that permanently removes from use or replaces approved chips or tokens at its gaming establishment, or that ceases operating ~~its~~ gaming establishment whether because of closure or sale of the ~~it~~ establishment or any other reason, must prepare a plan for redeeming discontinued chips and tokens that remain outstanding at the time of discontinuance. The licensee must submit the plan in writing to the ~~chairman~~ not later than 30 days before the proposed removal, replacement, sale, or closure, unless the closure or other cause for discontinuance of the chips or tokens cannot reasonably be anticipated, in which event the licensee must submit the plan as soon as reasonably ~~be~~ anticipated."

Nevada Gaming Commission Regulation 12.060(3), Use of Chips and tokens **states**:

"A licensee shall **not accept** chips or tokens as payment for any goods or services offered at the licensee's gaming establishment with the exception of the specific use for which the chips or tokens were issued, and **shall not** give chips or tokens as **change** in any other transaction."

Chips and tokens **are** to be used for gaming purposes **only** and ~~they~~ shall not be used as currency. Furthermore, chips and tokens must be disposed of in a manner as the **Chairman may approve or require**. Selling chips is not a method of **destruction approved** by the Gaming Control Board. Additionally, the Board is concerned about the chips'

LETTER (MR. DONALD L. LOGERWELL)
PAGE 2

potential use as currency, not only at the licensee's property but at other locations as well. Therefore, your request to purchase some or all of the Stardust Hotel and Casino gaming chips is hereby denied.

Further questions regarding this matter should be directed to the Operations Unit of the Enforcement Division, at 555 East Washington Avenue, Suite 2600, Las Vegas, Nevada 89101.

Sincerely,



Dennis K. Neilander
Chairman

DKN/RB:drh

cc: **Alan Goff, Director of Regulatory Compliance**
Jeff Rodefer, Associate General Counsel
Bobby L. Siller, Board Member
Mark A. Clayton, Board Member
Enforcement Division
Records and Research Services

Stakeholder Comments Supporting the Petition



Post Office Box 1787 • Olympia, WA 98507-1787 • 360-352-0514 • FAX 360-352-4579

July 6, 2006

RECEIVED

JUL 07 2006

**GAMBLING COMMISSION
DIRECTOR'S OFFICE**

Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504-2400

RE: WAC 230-02-412 – Gambling Equipment Defined – Logo Chips and Cards

Dear Commissioners Ellis, Parker, Niemi, & Bierbaum:

On behalf of our members, we are writing in support of the petition filed amending WAC 230-02-412 relating to logo chips and cards. Discussion on this issue has taken place during study sessions on a number of occasions.

Several of our members have chips with old logos or from businesses no longer licensed and operating with entities interested in purchasing these chips as collectibles. The current rule does not allow this.

We appreciate the Commission filing this petition for rule change to allow for further discussion. We hope a decision on this issue will be the ultimate outcome.

Thank you in advance for your attention and consideration.

Sincerely,

Dolores A. Chiechi
Executive Director

MICHELS DEVELOPMENT, LLC

8200 Tacoma Mall Blvd • Lakewood, WA 98499 • Ph (253) 588-4228 • Fax (253) 581-4375

Ms. Susan Arland
Rules Coordinator
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

Re: Petition to Amend WAC 230-02-412

Dear MS. Arland:

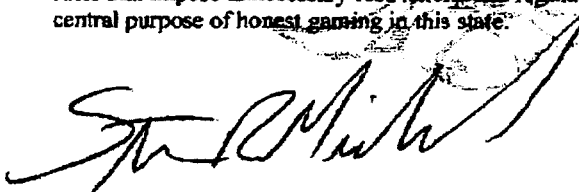
I am contacting you on behalf of Michels Development which is licensed to operate Chips LaCenter, Chips Bremerton, Chips Lakewood and Palace Casino. We have been advised that there is a petition to amend WAC 230-02-412 currently pending before the Commission and due for discussion at the next regular meeting later this month.

As we understand it, the rule, if amended as requested by the petitioner, would allow licensees to sell their unusable and obsolete cards in the event they go out of business or change their stock with a new logo or design. We write to express our unequivocal support for the petition and the amendment that it would authorize.

We have been advised that there are some concerns that allowing us to sell our chips under these conditions would somehow create a security problem. Those concerns, as we understand them, are that obsolete chips from one casino or card room could be taken to another and played on the tables or cashed at the cage.

We see those concerns as fanciful at best. We deal very closely with our chip manufacturers and suppliers to insure that our chips are both unique and secure. Chipco and GPIC work closely with the gaming industry to insure that chip colors, molds, inserts, edge spots, etc. guarantee that our supplies are unique, secure and free from risk of modification or counterfeiting. In our experience, these precautions have been an unqualified success as we have never heard of obsolete chips being successfully passed at another establishment.

As a licensee, we will continue to work closely with the Commission to insure that gambling in Washington remains legal and honest. At the same time, we feel obliged to speak up when we see Commission rules that impose unnecessary restrictions and regulations on otherwise harmless activity collateral to the central purpose of honest gaming in this state.


Steven R. Michels
Owner

Casinos Owned/Managed by Michels Development LLC

Chips Casino - Bremerton
Chips Casino - Lakewood
Palace Casino - Lakewood



Chips Casino - La Center
Palace Casino - La Center



June 13, 2006

Mr. Jim Shaffer
The Chip Room
445 Naim Circle
Highland, Michigan 48357

Re: Washington State Gambling Commission comment request

Dear Jim,

Thank you for the opportunity to comment on the proposed changes to the definition of "gaming equipment" under consideration by this **commission**. As I stated earlier, I think this definition needs to be expanded to indicate if the gaming chips are still "redeemable" or they are of "NO VALUE" at the casino.

If the chips are still "redeemable" then I believe the current definition as gaming equipment must continue to **apply**. If **the** chips are out of **circulation** (**the** casino has closed, or they **have** broadcast the termination of a certain series of chips as having no **value** from this date forward) then I believe it is proper to amend the definition to **non-gaming** equipment.

Your second area of **comment** related to the security **measures** CHIPCO offers on our **gaming** chips today. Our "full face graphics" are distinctive to our unique **manufacturing** process. The **edge** markings with **the** denomination or words on the edge of the chips provides perhaps the greatest deterrent to counterfeiting activity as the **surveillance** cameras can read these words or numbers on their cameras. Today **we** are the only chip manufacturer that knows how to put these distinctive markings (words or numbers) on the edge of the chips. (No counterfeiter can paint these markings with a paint brush).

We can print images or words in UV on the edge or the face of the chips. Not simply making an area glow by adding a UV dye, but actually printing words or **numbers/symbols** in UV that can be read. These words or **number/symbols** are very difficult to copy, where UV dye can be purchased at a hobby shop and painted on the surface with a paint brush. This is not the case with our UV security measures.

Serial **numbers** can be engraved or printed onto the chip surfaces as a counterfeit measure. We have done this for several casinos on their very high value chips.

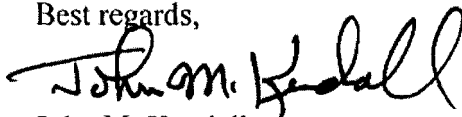
Trace elements **can** be added to the base resin to authenticate the chip as **an** original chip from the original manufacturer. We have done this in the past, but have not done this recently as on-site reliable testing procedures are very much influenced by the testing operator. If they are not trained you get a lot of "false positives" which then causes concern **until** other tests are **performed**.

Finally we are adding RFID (radio frequency **identification inlay**) technology to our gaming chips. **This is the ultimate security.** Each chip has a unique **license plate** programmed into **the** RFID inlay making it impossible to **counterfeit**. The "sensors" (readers) installed around the casino (on **table** games, chip trays, cashier stations, doorways and the vault area) makes for "realtime" reporting of live gaming data or tracking chips within the gaming area cost-effective and practical today. The next technology transition for gaming chips is to this RFID technology. It will **eliminate employee theft of chips**, offer accurate player tracking data, **balance** the cash draw, validate against **any** counterfeit chips and collect **employee performance** statistics automatically (miss pays, number of hands dealt per hour etc).

To summarize our security measures: **unique** manufacturing offering full face graphics, custom **edge** printing, UV printing, trace elements, serial numbering and **now** RFID technology.

If you need any further **comment from me** on this matter, please feel free to contact me at anytime.

Best regards,

A handwritten signature in black ink, appearing to read "John M. Kendall". The signature is fluid and cursive, with the first name "John" being the most prominent.

John M. Kendall
President

Iron Horse Casino, LLC

221 S 28th St. Tacoma, WA 98402

Phone: 253/572-3873 Fax: 253/572-4702

Letter supporting Mr. Logerwell's
Petition for Rule Change

June 1, 2006

Ms. Susan Arland
Rules Coordinator
Washington State Gambling Commission
P.O. Box 42400
Olympia, WA 98504-2400

Re: Petition to Amend WAC 230-02-412

Dear Ms. Arland:

My name is Mr. Chris Kealy, I have brought, sold and managed many Enhanced Card Rooms in Washington in the past several years. Currently I am the Managing Member of Member Management Services, LLC which is licensed to operate Iron Horse Casino Everett and Iron Horse Casino Auburn. I would like to take this time and talk to you about this petition to amend WAC 230-02-412 currently pending before Commission and due for discussion at the next regular meeting later this month.

As I understand it, the rule, if amended as requested by the petitioner, would allow licensees to sell their unusable and obsolete stock of chips and cards in the event they go out of business or change their stock with a new logo or design. I am writing to express my unequivocal support for the petition and the amendment that it would authorize.

I understand there are some concerns that allowing Enhanced Card Rooms to sell our obsolete and outdated chips under these conditions would somehow create a security problem. Those concerns, as I understand them, are that obsolete chips from one Enhanced Card Room or card room could be taken to another and played on the tables or cashed at the cage. This is an invalid concern because through the approval process for every Enhanced Card Room you need to demonstrate how the chips are unique to the site. Iron Horse Casino deals very closely with our chip manufacturers and suppliers to insure that our chips are both unique and secure. Chipco and GPIC work closely with the gaming industry to insure that chip colors, molds, inserts, edge spots, etc. guarantee that our supplies are unique, secure and free from risk of modification or counterfeiting. In our experience, these precautions have been an unqualified success as Iron Horse Casino has never had a obsolete chip successfully passed in either of our establishments.

If I cannot sell my obsolete chip stocks, I am forced to store or destroy them. I see no reason why we should not be able to recoup some of what we invested in those chip and card stocks. For example I currently have 100,000 chips in storage from Jimmy G's Enhanced Card Rooms and other Enhanced Card Rooms. I have purchased The Chips cost me \$.68 per chip which comes to \$68,000.00. Storing the chips cost me \$150.00 per month, in 1 year time I spend \$1,800.00 just for storage. However if I am allowed to sell my obsolete chips I can recoup some of my cost, the chips are worth from \$0.68 to \$2.00 a piece. Which means that I could possibly earn \$68,000.00 to \$200,000.00 which would recoup my cost for the chips and the cost for storage. And, I see no reason why others should not be able to use them for home games or add them to their collections when we no longer have them in play.

As a licensee, I will always continue to work closely with the Commission to insure that gambling in Washington remains legal and honest. At the same time, I feel obliged to speak up when I see Commission rules that impose unnecessary restrictions and regulations on otherwise harmless activity collateral to the central purpose of honest gaming in this state.

Sincerely,
Chris Kealy



Managing Member of Member Management Services, LLC

Stakeholder Comments Opposing the Petition

June 6, 2006

Ms. Susan Arland,
Rules Coordinator
Public Information Officer
4567 7th Avenue SE
Lacey, Washington

Dear Ms. Arland

At the suggestion of Mr. Gary Drumheller, I submit my thoughts regarding the proposed changes to WAC Rule 230-02-412, which is being considered and reviewed during the July 13-14th meeting of the Washington State Gambling Commission. My company is itself engaged in the provision of chips and other recreational gambling items. Based on that experience, I have a perspective that I trust is worth consideration in connection with the proposed changes and ask that you consider the following.

I readily admit that there are some limited potential benefits to the changes (specifically revenue to the existing casino and income to a distributor), however, those benefits are only realizable with some quality management and oversight and are far outweighed by the following downsides.

Among the "cons" that come readily to mind (and this is a partial list) are:

Unregulated Reuse Issues. The reuse of chips and cards for unauthorized gambling activities, may present the potential for fraud based on the implied imprimatur of the regulators and the casinos themselves. Discontinued chips sourced from local casinos present a significant challenge to foreclosing fraud.

Bureaucratic and Administrative Expenses Are Likely Excessive. This is at best a bureaucratic nightmare for WSGC and casinos. As between the WSGC and the constituent casinos it will require monitoring all activity during redemption periods, i.e., publication notice of the discontinuance of the chips, audits of chip counts, training all employees to recognize discontinued chips, and enforcement of the new gaming regulation.

Not a Recognized Precedent. All gaming states in the US destroy used chips; including Nevada, New Jersey, Connecticut and Mississippi so as to avoid the bureaucracies and attendant costs. Native American Reservations operating under Federal jurisdiction can sell their chips, but this is a rare occurrence. Reservations prefer to work closely with the States where they are located. The general rule is that the chips are destroyed.

Collectors Unfairly Damaged. To the extent there is reliance among collectors on the current state of the law, this action also destroys the collectible market. Rare chips will become commonplace and hence devalued.

Cronyism and Abuse. Only persons with close personal ties to the Gaming Industry would have access/knowledge of the sale of chips and cards. So there would be significant potential for abuse and back channeling chips that could be facilitated by cronyism.

Open Bidding Would Have to Be Required. If chips are not destroyed, there should be a publicly announced competitive bidding process, and that process needs to be considered as a part of any changed regulatory scheme.

For the above reasons, prudence dictates the proposed regulatory changes availing the resale of casino chips (a currency for the most part) not be implemented.

Thank you for the consideration.

Nicholas Bates

RECEIVED
FEB - 6 2006
GAMBLING COMMISSION
DIRECTOR'S OFFICE

February 3, 2006

Mr. Rick Day
Director
Washington State Gambling Commission
Box 42400
Olympia, Washington 98504

Dear Mr. Day,


I am writing in opposition to the suggested Rule change WAC 230-02-412 which will be heard by the Commission on February **10th**, 2006. As a chip collector and purchaser of chips from closed casinos, the proposed change would flood the market with chips which collectors have paid face value for when purchased from a casino in the State of Washington.

Throughout the US, chips from closed casinos are either destroyed under the direction of the local Gaming Authority or a hole drilled through them to make them valueless. This standard practice is honored in Nevada, New Jersey, Mississippi and Connecticut. I encourage the State of Washington to adopt this practice as well.

Lastly, if there is to be an open sale of chips in bulk from closed casinos or casinos that have relinquished their license in your state, it should be an open bidding process so one and all can participate in their purchase; **otherwise** destroy these chips. Currently, there are many chips from your state's casinos, which I understand from Jeannette and Susan, have been purchased and are being resold illegally on the **internet**. My suggestions above would hopefully eliminate that problem.

Thanks you for considering my thoughts and comments.

Sincerely,


Nicholas Bates

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FEB - 7 2006

**GAMBLING COMMISSION
DIRECTOR'S OFFICE**

HERMAN G. KIPLINGER
469 HUNTING RIDGE ROAD
STAMFORD, CONNECTICUT 06903

February 2, 2006

Mr. Rick Day
Washington State Gaming Commission
Olympia, WA

RE: WAC-230-02-412

To Whom It May Concern:

As a collector of casino chips, I am opposed to the potential new rule which would allow licensed casinos to sell their decommissioned chips to the public-at-large. All chips should be destroyed once their casino use has ceased.

Should this rule become law, I can assure you of two things: 1) my collection will lose significant value and 2) I will not have to worry about ever returning to Washington for any casino or chip related business.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "H.G. Kiplinger", written over the printed name.

Herman G. Kiplinger

RECEIVED

FEB 10 2006

**GAMBLING COMMISSION
DIRECTOR'S OFFICE**

February 4, 2006

Mr. Rick Day
Washington State Gambling Commission
Box 42400
Olympia WA 98504

Dear Mr. Day:

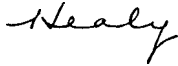
I have become aware of a possible rule change concerning casino poker chips, and I AM STRONGLY OPPOSED.

As a collector of chips I am opposed to this change WAC 230-02412 because it would be very detrimental to my collection.

I do a great deal of collecting in Nevada, and they destroy all chips when a casino closes.

Please add my name to those in OPPOSITION to this proposed ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Healy", written in dark ink.

Helen Healy

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FEB 10 2006

**GAMBLING COMMISSION
DIRECTOR'S OFFICE**

Washington State Gaming Commission
Attention: Commissioner Rick Day
Box **42400**
Olympia WA **98504**

Dear Mr. Day,

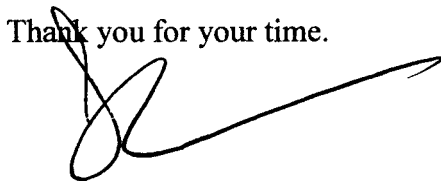
I am writing to ask that you strongly oppose WAC **230-02-412**.

As a collector of casino chips **from** around the world, I truly believe that chips should be destroyed when a casino closes.

In fact, I'm not aware of any other state in the USA that doesn't destroy or have the chips notched when a casino closes, which is also a common practice worldwide as well.

I've been visiting Washington State casinos for years and this would definitely stop me from going.

Thank you for your time.

A handwritten signature in black ink, appearing to read 'Jay Lakin', with a long horizontal stroke extending to the right.

Jay Lakin
5130 S Ft Apache Rd
Las Vegas NV 89148
703-627-7666

RECEIVED

FEB 10 2006

**GAMBLING COMMISSION
DIRECTOR'S OFFICE**

Washington State Gaming Commission
Attention: Commissioner Rick Day
Box 42400
Olympia WA 98504

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I've been visiting Washington State casinos for years and this would definitely stop me from going.

Thank you for your time.

A handwritten signature in black ink, appearing to read 'Michael Jackness', with a long horizontal flourish extending to the right.

Michael Jackness
7093 Comanche Canyon Ave
Las Vegas, NV 89113

RECEIVED

FEB 10 2006

**GAMBLING COMMISSION
DIRECTOR'S OFFICE**

Washington State Gaming Commission
Attention: Commissioner Rick Day
Box **42400**
Olympia WA **98504**

Dear Mr. Day,

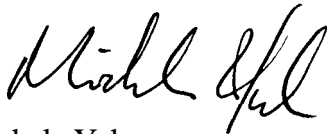
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In fact, I'm not aware of any other state in the USA that doesn't destroy or have the chips notched when a casino closes, which is also a common practice worldwide as well.

I've been visiting Washington State casinos for years and **this** would definitely stop me **from** going.

Thank you for your time.

A handwritten signature in black ink, appearing to read "Michele Yeh".

Michele Yeh
7093 Comanche Canyon Ave
Las Vegas, NV **89113**

THE MCKENZIE COMPANY
PROPERTY INVESTMENTS

RECEIVED

FEB 13 2006

GAMBLING COMMISSION
DIRECTOR'S OFFICE

Regarding WAC 230 - 02-412

Dear Mr. Day

It has come to my attention that you are considering the above referenced bill. I am opposed to this bill and believe that chips should be drilled through or destroyed when a casino closes.

I am a collector ~~and~~ and a "casino chips" effects the value of my investment. Thank you

John McKenzie

Rules Up For Discussion



Proposed Amendments to

WAC 230-25-040 Fund-raising event—House rules to be developed and posted—Limitations on wagers.

WAC 230-25-050 Wagering among participants not permitted.

WAC 230-25-325 Limited fund-raising event – Procedures and restrictions.

New Section

WAC 230-25-045 Poker tournaments at fund-raising events and limited fund-raising events FRE's.

ITEM 10 (a)-(d) on the September 15, 2006, Commission Meeting Agenda.	Statutory Authority 9.46.070 & 9.46.0233
Who proposed the rule change?	
Staff on behalf of charitable and nonprofit organizations.	
Proposed Change	
<p>These proposed rule changes and new rule would allow poker tournaments at fund-raising events (FRE) and limited FREs.</p> <p>WAC 230-25-040: This rule requires house rules to be posted for fund-raising events, including wagering limits. A new subsection states there are no limits on the number of poker tournaments chips that can be wagered at FREs.</p> <p>WAC 230-25-045: This new rule lists additional requirements licensees must follow when offering poker at FREs.</p> <p>WAC 230-25-050: This rule prohibits players from wagering against each other (such as poker games) at FREs. Language was added to provide an exception to this restriction and authorize poker tournaments at FREs.</p> <p>WAC 230-25-325: Subsection (7) was added to authorize poker tournaments at limited fund-raising events.</p>	
History of Rule	
<p>WAC rules do not currently allow charitable/nonprofit organizations to conduct poker tournaments that are open to the general public. Card games such as poker may be played at charitable/nonprofit organizations but only by members. RCW 9.46.0233 authorizes charitable or nonprofit organizations to operate bingo, amusement games, contests of chance, lotteries, and raffles at a FRE. These events are also known as Casino or Reno Nights and are open to the public.</p> <p>House-banked card games such as blackjack are played at FREs. However, games where players wager against each other (such as poker) is prohibited by WAC 230-25-050.</p> <p>The RCW limits FREs to:</p> <ul style="list-style-type: none"> • One FRE for a period of 72 consecutive hours once during a calendar year; or two FREs during a calendar year with each not exceeding 24 consecutive hours. • Annual net receipts cannot exceed \$10,000. 	
Impact of the Proposed Change	
<p>With the increasing popularity of poker, Commission staff has received numerous calls from charitable/nonprofit organizations requesting to operate poker tournaments to raise funds. Many of the requests are to operate poker tournaments in conjunction with a dinner or other events used to raise money for organizations such as hospital foundations, churches, parent groups, and other charitable organizations.</p>	

Allowing poker tournaments at a Fund Raising Event is consistent with the recent approval of poker tournaments at Recreational Gaming Activities.

Regulatory Concerns

None

Resource Impacts

Staff currently spends a considerable amount of time answering questions and assisting charitable/nonprofit organizations wishing to operate poker tournaments for fund raising purposes.

Any additional regulatory duties created by allowing poker tournaments should be offset by the time not spent addressing why charitable/nonprofits can't operate poker tournaments and explaining what they can do.

Policy Consideration

The increase of other forms of gambling (house-banked card rooms and tribal casinos) has impacted charitable and nonprofit organizations ability to raise funds through gambling.

Poker tournaments are allowed as a non-profit and charitable licensed activity, but have not previously been allowed at Fund Raising Events. This will give non-profit or charitable organizations another venue to raise funds for their stated purposes.

Stakeholder Statements For the Proposed Rule Change

A request was read into the record at the June 2006, Commission meeting as to whether the Commission was going to allow poker tournaments at fund-raising events.

Stakeholder Statements Against the Proposed Rule Change

None.

Licensees Directly Impacted

Fund-raising event licensees and limited fund-raising event licensees.

Staff Recommendation

Further discussion.

Proposed Effective Date for Rule Change

November 13, 2006, assuming the rule is adopted at the October 2006, Commission meeting to become effective 31 days after filing.

Amendatory Section:

**WAC 230-25-040 Fund-raising event -- House rules to be developed and posted --
Limitations on wagers.**

(1) Before conducting a fund-raising event (FRE), each licensee shall develop house rules to govern the scope and manner of all gambling activities to be conducted during the FRE. At a minimum, these rules shall:

(a) State the maximum amount of a single wager that may be placed by FRE participants. Wagering limits are as follows:

(i) Single wagers shall not exceed ten dollars;

(ii) Raffles or other similar drawings may exceed the ten dollar wagering limit, but may not exceed the limitations set forth in RCW 9.46.0277; ~~((and))~~

(iii) There are no limits on wagers made using scrip; and

(iv) There are no limits on the number of poker tournament chips that may be wagered.

(b) Prohibit any thing of value from being given to any person involved in the management or operation of the FRE; and

(c) Prohibit any person involved in the management or operation of the FRE from accepting any thing of value.

Posting house rules.

(2) A copy of the rules shall be conspicuously posted in the area where the FRE is being conducted at all times during the FRE. A copy must be available, upon request, to any law enforcement officer or representative of the commission, or member of the general public

NEW SECTION

WAC 230-25-045 Poker tournaments at fund-raising events and limited fund-raising events.

Poker tournaments are authorized at fund-raising events (FREs) and limited FREs under FRE rules with the following additional requirements.

Net Receipts Limitation

(1) All money paid to enter a tournament or purchase chips or script to enter a tournament is considered to be a wager for the purpose of determining the \$10,000 net receipts limits.

Prizes.

(2) Chips used in card tournaments do not have a monetary value and may only be redeemed for prizes.

Posting of rules.

(3) The licensee must adopt poker tournament rules and conspicuously post the rules at the tournament location.

Prize records.

(4) The licensee must maintain a record of all prizes awarded to include the amount the licensed operator actually paid for each prize and the name and complete address of each winning participant. If prizes are donated, the licensee must maintain a record that includes the name of the donor and a description of the prizes donated.

Amendatory Section:

WAC 230-25-050 Wagering among participants not permitted.

No licensees ~~((to conduct))~~ conducting a fund-raising event shall not permit, as a part of that fund-raising event, a gambling activity which involves a wagering of money or other items of value by one participant against another participant. This rule ~~shall not be construed to~~ does not prohibit gambling activities wholly administered by the licensee wherein the licensee collects wagers from among the participants and determines the winners and amounts of prizes on a pari-mutuel basis or poker tournaments as authorized under WAC 230-25-045.

Amendatory Section:

WAC 230-25-325 Limited fund-raising event -- Procedures and restrictions.

Pursuant to RCW 9.46.0233(2), nonprofit or charitable organizations may offer *limited* fund-raising events (FREs). Organizations offering *limited* FREs must operate the FRE under the following operational procedures:

Operating procedures.

- (1) Only members of the organization and their guests shall participate in the event. The event shall not be open to the general public.
- (2) Participants shall purchase scrip with cash.
- (3) Scrip shall be exchanged at gambling stations for chips.
- (4) Only bona fide members will be utilized for all transactions involving acceptance of cash for scrip, conducting the schemes to determine the winners of merchandise prizes, and maintaining records during the event.
- (5) The value of all purchased prizes must not exceed ten percent of the gross revenue from the event, less the cost of the FRE equipment rental contract.
- (6) Any prizes purchased from the FRE equipment distributor must be disclosed. The cost may not exceed the fair market value. Prizes may be disclosed to the public at the retail value.
- (7) Poker tournaments may be operated at limited fund-raising events. Tournament rules must be established and posted.

FRE equipment distributors.

Limitations.

~~((7))~~ (8) The nonprofit organization may only contract with a person or organization licensed as a FRE equipment distributor to provide the equipment and staff to operate the gaming stations.

~~((8))~~ (9) Under no circumstances shall employees of the FRE equipment distributor handle cash transactions or allow participants to purchase chips with cash.

Compensation.

~~((9))~~ (10) The fee paid to the FRE equipment distributor shall be in compliance with WAC 230-25-120. The FRE equipment distributor shall not share in any way in the proceeds of the event except as set forth in the rule.

Information to be submitted with FRE application.

~~((10))~~ (11) The application must include details relating to the initial cost to participate, and method for purchasing additional scrip, as well as identify all costs included in the initial price to enter that are not related to the gambling activity (i.e., meals, drinks, etc.).

The application must also identify the scheme that will be followed to distribute the merchandise prizes to participants at the end of the event (i.e., raffle, auction, etc.).

(11) All contracts signed by the FRE licensee with the FRE equipment distributor and premises provider must be submitted with the FRE license application.

Fees.

(12) The licensing fee for a *limited* FRE shall be as set forth in WAC 230-04-202(4).

[Statutory Authority: RCW 9.46.070. 00-15-048 (Order 387), § 230-25-325, filed 7/17/00, effective 8/17/00.]

Rules Up For Discussion



Proposed Amendments to

WAC 230-02-205 Gambling service supplier defined.

New Sections

WAC 230-02-203 Defining lending agent, loan servicer, or placement agent.

WAC 230-02-204 Defining regulated lending institution.

Companion Rules Simplification Project Rules

These companion rules won't become effective until 1/1/08.

Amendatory Section: WAC 230-03-210 Applying for a gambling service supplier license.

New Sections:

WAC 230-03-211 Defining "Lending Agent," "Loan Servicer," or "Placement Agent"

WAC 230-03-212 Defining "Regulated Lending Institution"

ITEM 14 (a)-(f) on the September 15, 2006, Commission Meeting agenda.	Statutory Authority 9.46.070
Who proposed the rule change?	
Staff.	
Proposed Change	
<p><u>The rule is being changed to clarify the following:</u></p> <ol style="list-style-type: none"> 1) Currently, the rule can be interpreted broadly because it refers to providing financing for "infrastructure that supports gambling operations." Infrastructure is a broad word; Commission staff is seeking to restrict licensure to those that provide the financing for facilities, equipment or operational needs. In this case, the financing referred to is not that offered by a traditional lending institution. 2) To expand the list of financiers not required to be licensed as well as setting forth formal suitability obligations. 3) Businesses performing analysis of gambling equipment. For example, Tribal-State compacts authorize Tribes to have their Tribal Lottery Systems analyzed by vendors from a list approved by the Commission. In order to qualify to be placed on the list of approved vendors, our practice has been to require vendors to be licensed. 4) Businesses providing gambling related software, which enter into an ongoing financial relationship with a licensed manufacturer. Gambling related software is that software which can affect the results or outcome of the Tribal Lottery System games, or the digital card table games, and/or directly interfaces with or controls the operation of the gambling equipment. Commission staff have met with and considered information provided by the industry and Tribal advocates. <p><u>The rule is being changed to specifically require licensure of:</u></p> <ol style="list-style-type: none"> 1) A lending agent, loan servicer or placement agent. In the past several years, we have seen growth in the area of non-traditional lenders of money; therefore, Commission staff felt the rule should clearly set forth this requirement so these lenders know in advance they are required to be licensed. The difference between this type of lender and a traditional lender such as a bank, mutual savings bank or credit union is a traditional lender falls within well established federal regulatory jurisdictions. <p><u>Changes made after the July 2006, Commission meeting (tan paper).</u></p> <p>Amended #1: Housekeeping edits to: WAC 230-02-205 (1)(i), (2)(d) and (2)(e); and WAC 230-03-210 (1)(i) and (2)(d).</p>	
History of Rule	

WAC 230-02-205 was originally filed in 1997. Prior to that time, the Commission had a license classification called Class III Management Company/Financier. In 1997, the Commission removed the Class III Management Company/Financier license class, and included those services in the newly created Gambling Service Supplier classification. Those providing gambling services that did not fit the traditional manufacturer, distributor or operator license class were also included in the newly created Service Supplier classification.

The rule was amended in 1998, 2000, and in January 2004 to keep pace with the changing industry. The changes to WAC 230-02-205 are matched with new definition sections explaining which persons or entities are considered lending agents, loan servicers, or placement agents (02-203), and what a regulated lending institution is (02-204). Lenders would not require a license if they are regulated as defined in the new section.

Impact of the Proposed Change

The circumstances surrounding the need for this change are:

- 1) This will enable staff and the public to know whether or not they need a service supplier license if the applicant is not a traditional manufacturer, distributor or operator. Staff will spend less time answering questions and analyzing particular situations for possible licensure.
- 2) Changing technology and business practices have created new opportunities for those providing gambling services.
- 3) There is no particular financing situation that prompted this rule change. However, staff is continually faced with analyzing new creative financing scenarios offered by lending institutions that do not have the regulatory oversight that traditional banks or mutual savings institutions have.
- 4) Since the definition for gambling equipment changed to include software, staff has had difficulty applying a consistent standard for businesses that might exert actual or potential influence in the area of software. This change will assist staff and the public in determining whether or not software, and its related attributes, require licensure.

Regulatory Concerns

These changes will assist staff in applying current rules to current situations.
This change will assist our licensing program by formally codifying current practice.
There is no impact to current field enforcement procedures.

Resource Impacts

Licensing staff will more efficiently be able to assist applicants and licensees when answering questions.

Policy Consideration

This will require some businesses to be licensed that were not required to be licensed in the past.

Statements Against the Proposed Rule Change

None.

Licensees Directly Impacted

Gambling service suppliers and those requiring their services.

Staff Recommendation

Further discussion.

Proposed Effective Date for Rule Change

WAC 230-02-203, 230-02-204, 230-02-205: January 1, 2007.

Companion Rules Simplification Project Rules:

WAC 230-03-210, 230-03-211, 230-03-212: January 1, 2008.

New Section:

WAC 230-02-203 Lending agent, loan servicer, and placement agent defined.

A person or entity, other than a regulated lending institution, that finds, places, administers, facilitates, or services loans to licensees and whose services include, but are not limited to, one or more of the following:

- (1) Charging an on-going fee for their services;
- (2) Maintaining rights as the lender;
- (3) Determining when the loan is in default; or
- (4) Maintaining access to collateral.

New Section:

WAC 230-02-204 Regulated lending institution defined.

A regulated lending institution is any state or federally regulated organization primarily in the business of lending money. An organization must demonstrate that it is a regulated lending institution by meeting all of the following criteria:

- (1) Is registered and actively regulated by the Securities and Exchange Commission or any other United States federal or state governmental banking or financial regulatory agency. Lending institutions must demonstrate to the commission that they are actively regulated by at least:
 - (a) Annually reporting information on their lending activities to the regulatory agency; and
 - (b) Receiving regular audits or inspections by the regulatory agency; and
 - (c) Owners and officers undergo criminal history background checks.
- (2) Is acting as a passive investor in the licensed establishment to which they are lending money. For the purposes of this rule, passive investors are those who do not have actual or potential influence over the operations of the licensed entity. A lending institution will not be considered a passive investor if they:
 - (a) Appoint or have the right to appoint officers, directors, consultants, or other positions with the licensed establishment; or
 - (b) Require the licensed establishment to seek their approval or authorization in making business decisions for the organization; or
 - (c) Have full access to records of the establishment; or
 - (d) Have the ability to convert the debt into shares which would result in the lender becoming a substantial interest holder per WAC 230-02-300 (4).
- (3) A majority of its outstanding loans receivable are from businesses not engaged in gambling activities.

Amended #1
September 2006, Commission Meeting Version

Amendatory Section:

WAC 230-02-205 Gambling service supplier defined.

A "gambling service supplier" is any person who provides gambling related services for compensation, whether directly or indirectly.

- (1) Gambling related services include at least the following:
 - (a) Providing consulting or advisory services regarding gambling activities;
 - (b) Providing gambling related management services;
 - (c) Providing financing for purchases or leases of gambling equipment or for providing financing for infrastructure or facilities, or equipment, that supports gambling operations for more than one licensee. For purposes of this section, financing by any bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution shall not be deemed as providing gambling related services;
 - (d) Acting as a lending agent, or loan servicer, or placement agent as defined in WAC 230-02-203;
 - (e) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission;
 - (f) Providing assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer;
 - (g) Providing installation, integration, maintenance, or any other service of digital surveillance systems that allows direct access to the operating system; ((or))
 - (h) Training individuals to conduct authorized gambling activities; or
 - (i) Performing the testing and certification of Tribal Lottery Systems ((as)) in meeting requirements specified in the Tribal-State Compact;
- (2) The term "gambling services supplier" does not include the following:
 - (a) Universities and colleges that are regulated by the Washington state board of community and technical colleges and the higher education coordinating board which train individuals to conduct authorized gambling activities;
 - (b) Licensed manufacturers or distributors who service and repair pull-tab dispensing devices, bingo equipment or any other authorized gambling equipment;
 - (c) Attorneys, accountants, and governmental affairs consultants whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; ((and))
 - (d) Persons that only provide nonmanagement related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such ((services)) **service** does not exceed twenty-five thousand dollars during any calendar year.
 - (e) ((Person who)) Persons that provide names, images, artwork or associated copyrights or trademarks, or other features that do not affect the results or outcome of the game, for use in gambling equipment; and
 - (f) Regulated Lending Institutions as defined in WAC 230-02-204.

Bold = Changes made after the July 2006, Commission meeting.

Companion Rules Simplification Project Rule

This rule will not be effective until 1/1/08

Amended #1

September 2006, Commission Meeting Version

Amendatory Section:

WAC 230-03-210 Applying for a gambling service supplier license.

(1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

- (a) Consulting or advisory services regarding gambling activities;
- (b) Gambling management services; or
- (c) Financing for purchases or leases of gambling equipment or financing for providing infrastructure or facilities, or equipment that supports gambling operations for more than one licensee; or
- (d) Acting as a lending agent, or loan servicer, or placement agent; or
- (e) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer; or
- (f) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or
- (g) Training individuals to conduct authorized gambling activities; or
- (h) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission; or
- (i) Performing the testing and certification of Tribal Lottery Systems ((as)) in meeting requirements specified in the Tribal-State Compact.

(2) You do not need a gambling service supplier license if you are:

- (a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or
- (b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or
- (c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or
- (d) A person (~~that~~) who only provides nonmanagement-related recordkeeping services for punch board and pull-tab operators, when the combined total gross billings from such ~~((services))~~ service does not exceed twenty thousand dollars during any calendar year; or
- (e) A person who provides names, images, artwork or associated copyrights or trademarks, or other features that do not affect the results or outcome of the game, for use in gambling equipment; or
- (f) Regulated Lending Institutions.

[Statutory Authority: RCW 9.46.070 (4), (14), and (20).]

Bold = Changes made after the July 1006, Commission meeting.

Companion Rules Simplification Project Rule

This rule will not be effective until 1/1/08

New Section:

WAC 230-03-211 Defining “lending agent,” “loan servicer,” or “placement agent”

(1) "Lending agent," "loan servicer," or "placement agent" mean any person or entity, other than a regulated lending institution, that finds, administers, facilitates, or services loans for a licensee.

(2) The services of lending agents, loan servicers, or placement agents include, but are not limited to,

- (a) Charging an on-going fee for their services;
- (b) Maintaining rights as the lender;
- (c) Determining when the loan is in default; and/or
- (d) Maintaining access to collateral.

Companion Rules Simplification Project Rule

This rule will not be effective until 1/1/08

WAC 230-03-212 Defining "regulated lending institution"

- (1) "Regulated lending institution" means any state or federally regulated organization primarily in the business of lending money for investment purposes.
- (2) "Regulated lending institutions" must
 - (a) Register with the Securities and Exchange Commission or any other United States federal or state governmental banking or financial regulatory agency.
 - (b) Be actively regulated by the Securities and Exchange Commission or any other United States federal or state governmental banking or financial regulatory agency. "Active regulation" means
 - (i.) Reporting annually on lending activities to the regulatory agency;
 - (ii.) Receiving regular audits or inspections by the regulatory agency; and
 - (iii.) Undergoing criminal history background checks of owners and officers.
 - (c) Act as passive investors in the licensee. "Passive investors" mean investors who have no actual or potential influence over the operations of the licensee. A "passive investor" does not
 - (i.) Appoint or have the right to appoint officers, directors, consultants, or other positions with the licensee;
 - (ii.) Require the licensee to seek approval or authorization in making business decisions;
 - (iii.) Have full access to the records of the licensee;
 - (iv.) Have the ability to convert debt into shares which would result in the lender becoming a substantial interest holder; or
 - (v.) Have any other influence or control over the licensee.
 - (d) Have non-gambling-related businesses as a majority of their outstanding loans receivable.